



**UNIVERSIDADE ESTADUAL DE CAMPINAS  
INSTITUTO DE ECONOMIA**

**PURITY MAANYA NJAGALA**

**Analyzing the industrial relations system in Kenya**

**Análise do sistema de relações industriais no Quênia**

**Campinas  
2019**



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**Prof. Dr.Hugo Miguel Oliveira Rodrigues Dias – orientador**

Dissertação de Mestrado apresentada ao Programa de Pós-Graduação em Desenvolvimento Econômico do Instituto de Economia da Universidade Estadual de Campinas para obtenção do título de Mestra em Desenvolvimento Econômico, na área de Economia Social e do Trabalho.

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## **DEDICATION**

First and foremost, I dedicate this research to The Almighty God for giving me the strength and wisdom to conduct it to its completion. My heart most felt gratitude goes to my family for believing in me and supporting me spiritually, emotionally, mentally and financially.

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## **ABSTRACT**

The existence of well elaborated Constitution and well articulated Labour Laws amongst other Statutes and Law Governing Bodies does not guarantee a smooth running of IRS in a specific country and in this case, Kenya. An increase in the number of trade unions and growth of number of members in various unions does not necessarily lead to the total well-being of the workers more so when it comes to issues like representing workers in the Collective Bargaining Agreement, organizing and recruitment of workers as well as protecting their rights. Measures on respecting the rule of law: putting into practice the set out laws of the country, emphasizing on the law governing bodies to carry out their required duties, strengthening trade unions on their roles and the way which trade unions are following for a better tomorrow and wealth distribution among others are a key consideration in the process of a strong and respectable IRS in Kenya. Also, the government of Kenya needs to work hand in hand with workers through trade unions and employers through their associations as well as other actors of Industrial Relations System to realize a strong IRS in the country and a boost in economy of Kenya.

## **RESUMO**

A existência de uma Constituição bem elaborada e de leis trabalhistas bem articuladas, entre outros Estatutos e Instituições, não garante o bom funcionamento do Sistema de Relações Industriais (SRI) em um país específico e, neste caso, no Quênia. Um aumento no número de sindicatos e o crescimento do número de membros não conduzem necessariamente ao bem-estar total dos trabalhadores, mais ainda quando se tratam de questões como a representação de trabalhadores no Acordo Coletivo de Trabalho, a sua organização e recrutamento, bem como a proteção dos seus direitos. Medidas de respeito ao Estado de Direito: pondo em prática as leis estabelecidas no país, enfatizando as instâncias governamentais que cumprem suas obrigações, fortalecendo os sindicatos em seus papéis e a maneira como os sindicatos estão procurando construir um amanhã melhor e a distribuição de riqueza, entre outros, são considerações importantes no processo de construção de um SRI forte e respeitável no Quênia. Além disso, o governo do Quênia precisa trabalhar de mãos dadas com os trabalhadores através dos sindicatos e com os empregadores através de suas associações, bem como com outros atores do Sistema de Relações Industriais, para construir SRI forte no país e impulsionar a economia do Quênia.



## **LIST ACRONYMS AND ABBREVIATIONS**

IR: Industrial Relations

IRS: Industrial Relations System

FKE: Federation of Kenya Employers

COTU-K: Central Organization of Trade Union of Kenya

ELRC: Employment Labour and Relations Court

NLB: National Labour Board

ILO: International Labour Organization

ILS: International Labour Standards

EA: Employment Act

LRA: Labour Relations Act

LIA: Labour Institutions Act

OSHA: Occupation Safety and Health Act

WIBA: Work Injury and Benefits Act

NESC: National Economic and Social Council

NGOs: Non-Governmental Organizations

KNUT: Kenya National Union of Teachers

NSSF: National Social Security Fund

NHIF: National Hospital Insurance Fund

KFRTU: Kenya Federation of Registered Trade Unions

EATUC: East African Trade Union Congress

KFL: Kenya Federation of Labour

KAWC: Kenya Africa Workers Congress

KNBS: Kenya National Bureau of Statistics

HDI: Human Development Index

CEIC: Census and Economic Information Center

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# 1. CHAPTER ONE: INTRODUCTION TO INDUSTRIAL RELATIONS SYSTEM

## 1.1. THE DEBATE ON INDUSTRIAL RELATIONS

Industrial Relations System is a relationship that exists between three main parties: the state through the government, the employers and the employees. Industrial relations are believed to have begun during the industrial revolution which brought about modern employment relationship. The industrial revolution ended up bringing free labor markets and large-scale industrial organizations with a massive number of workers, who were basically the wage workers. As society highly fought with these huge economic and social changes, labour problems were created. Some of the problems that arose were Low wages, long working hours and abusive supervisory practices, which led to high, violent strikes by employees, and the threat of social instability. Intellectually, *Sidney Webb* and *Beatrice Webb's Industrial Democracy* (1897) are the known first authors of industrial relations. According to them, industrial relations came into existence at the end of the 19th century as a middle ground between classical economics and Marxism. Sidney and Beatrice Webb's work was seen being an important intellectual work during this time.

In the field of industrial relations, Sydney and Beatrice Webb mostly focused on assessing the study of the labour market, unions and collective bargaining in Britain. In this research, (Analyzing IRS in Kenya), our primary focus will be on John Thomas Dunlop's book, *Industrial Relations System*. John Thomas Dunlop proposed a more theoretical approach that became paramount in a more elaborate way, and it tends to paint a real picture or what IRS really entails as it gives more focus on rules and ideology among others.

The concept of Industrial Relations System was later on advanced by *John Thomas Dunlop* (1958). According to him, there are similar features that explain more on the context of Industrial relations System from one given job to another. They all revolve under three main actors: the government agents, employer, represented by the manager in a given organization and lastly are

the workers through their representatives. There were identified problems associated with IRS as compared to those experienced by other systems as recognized by practitioners. The solutions to these problems are also unique. Changes affect IRS differently as compared to other systems.

Just like an extended family, the Industrial Relations System brings about a close relationship between a group of workers and managers. IRS and economic system have different characteristics, and in some aspects, they tend to overlap. However, the two share the same interests when it comes to procurement of a workforce as well as the setting of compensation for labour services as Dunlop puts it.

As mentioned in the beginning, the main **actors** of IRS are three (Government agencies, managers who are the employers and the workers). The employers and the employees have a close relationship in that, the employers through the managers have the responsibilities to manage an organization, while the workers/ employees must follow instructions assigned to them. Some workers are “unorganized”, but while working together for a while, they build a formal hierarchy which maybe organized in different organizations such as workers’ councils, unions or parties. The managers of a specific or any given organization may be public or private or both in different proportions. These managers do not necessarily need to have any relationship to the ownership of the capital assets of the workplace: that is, in the hierarchical level. Dunlop gives the example of management organizations in the US like Tennessee Valley Authority, among others that consider the management organizations diverse character.

In the **context** of Industrial relations System, Dunlop is trying to introduce the interaction that is normally witnessed from the three actors. He talks about the features of the environment of IRS. According to Dunlop these features, are determined by, but not limited to the society at large and its other subsystems, whereby he further says that IRS does not explain them. Dunlop lists down the significant aspects of the environment where the government, management and employees interact. By Dunlop’s words, these characteristics are as follows:

- a. “The technological characteristics of workplace and the work community;
- b. The product and factor markets or budgetary constraints that impinge on the actors.” (Pg48)

Dunlop talks about the effects of technological traits of work on IRS that influences the form of management and employee organization. The following are some of the characteristics that are related to technology and the workplace;

“The isolation of the workplace from the urban areas;  
 The essentiality of the product to the health and safety or the economic development of the community;  
 The proportions of various skills in the workplace, among others.” (Pg 48)

These features, according to Dunlop, results in different “problems to the actors and make it hard to find their solutions which may otherwise be either invented or applied.” (Pg 49) There are various or slightly different type of challenges in the IRS that were attributed to the named environment. Dunlop continues by saying that, identical technological environments in different national societies maybe regarded as exerting a strong tendency upon the actors to create similar kind of rules. Industrial Relations System the market or budgetary constraints, as the other feature that is important to it. This feature takes place at the first stage directly upon the managerial hierarchy, but they do not necessarily condition all the actors in a particular system. (Dunlop 1958)

There exists a contrast between industries sheltered or exposed to an international competition which is considered to be another illustration. Also in inclusion, is the interdependence of wage and price-fixing in public utilities which gives a unique feature to IRS. The other thing that indirectly influences technology and other factors of workplace is the market or the budgetary context.

There is another crucial characteristic of the environmental context referred to as “*the locus and distribution of power*”,(pg 50). This characteristic is seen in a larger society whereby the particular industrial relations complex is a subsystem. A colonial administrator, the dominance of an army group and the church among others are considered by Dunlop to be types of power

orientation in the broader society that tends to shape an IRS. Distribution of power in this society helps to build/ develop the IRS itself.

The following are therefore, the context of IRS given for the said actors; technological and work community environment; the product and factor market or budgetary constraints and lastly, distribution of power in the contextual society.

The **rules** governing the IRS actors (government, employers and employees) are mostly established by the actors themselves. The system, therefore, involves the procedure for establishing regulations and other procedures mandated to deciding for the application of these rules to particular situations. The establishment and administration of these rules is a vital interest of the industrial relations subsystem of industrial society. In any given time, the Industrial Relations System's regulations, may change. This may come about as a result of changes in the context and the relative statuses of the actors. (Dunlop 1958)

Together, all the three actors may at some point play a significant role in rule setting and so is in administration. They also have different roles to play independently. For instance, there may be a dominant role without substantial participation by managers or in case of worker hierarchy as practiced by specialized government agencies. In terms of the managerial authority, there may be witnessed a relatively free inhibited hand overtly by either the government agencies or by workers. On the workers' side, (hierarchy) may carry the central role in rule fixing. The workers and the management may decide to set their rules together without the interference of government agencies. Dunlop further explains.

The guidelines of making rules that govern the workplace and guarding the community are crucial and the central aspect of IRS helping to distinguish different systems. IRS establishes a vast universe of substantive rules other than the procedures governing the creation and administering the given rules. According to Dunlop, these rules can include the following; (a) the regulations that govern compensation in different forms; (b) what the employees are expected

or obligated to do at their workplace and the procedure to be followed in case they break these rules (disciplinary proceedings); (c) the rules that pinpoint various rights and duties entitled to workers in different job categories. Regardless of these rules, there is a problem of determination to which extent the similar rules were developed in IRS with a similarity in the market, technological contexts as well as budgetary constraints.

The IRS dictates most of the rules at a given workplace and work-related community including but not limited to the guidelines and procedures for their creation and administration.

An **ideology** of the IRS on the other part is explained by Dunlop to be a body of similar ideas. These ideas define the role played by different actors, the place they were identified with and the different approaches that they hold independently towards the area, and the part of others in the system. In a work community where managers show their superiority complex over workers and they do not give them freedom for workers to air out their views, and on their part, the workers feel the role of managers does not exist, and then there will be no chance whereby each actor gave certain function to each other. Therefore, such kind of a relationship in the workplace will be toxic, and no achievement in terms of stability would be met in the IRS. (Dunlop 1958)

There is a need to distinguish between disputes that occur over the setting of IRS or preferably those that were resulted from fundamental inconsistencies in the IRS and those within the accepted framework of industrial relations system. Each actor of the IRS has their ideology: from specialized public agencies to managerial hierarchy and also to worker hierarchy. There may be a slight difference between the doctrine of the IRS and that of the broader society, but at the same time, they are both expected to be at least compatible in the development of industrial society.

There might be seen differences between the actors within the IRS and some portion of the larger society which may be dominant. This might be witnessed during the process of industrialization. Example of such ideology is that of the traditional agricultural landholders. In trying to conclude



Dunlop's concept, we can thus note that industrial relations system, is a system that mainly produces the guidelines of a given workplace. These guidelines or rules are as a result of interaction between three main actors who are the workers through unions, employers and associated organizations and government (representing the state).

As much as Dunlop tried to come up with the concept of industrial relations system, not everyone agreed with what he laid out. Some scholars have openly criticized Dunlop's approach to what industrial relations entail. Amongst Dunlop's critics are as follows;

*Allan Flanders* sees a system of industrial relations to be is a system of rules (Flanders, 1965). The rules to be considered are those developed through the traditional relationships in the industry: the personal and or unstructured relationships are positioned beyond the capacity of a system of industrial relations, as they are not concerned with the employment feature. Employment relationship arises only from job contracts. Hence the industrial relations system's chief concern is with the institutions of job regulation and the rules framed therein. The principal institution of job regulation considered by Flanders is collective bargaining. The difference between Dunlop's and Flanders' model is that Dunlop considers 'rules' as an output of the system, while Flanders considers the industrial relations system as a system of rules. Flanders also outlines the system boundaries, while Dunlop includes the 'environmental contexts' as components of the system.

Flanders also makes a distinction between formal and informal systems of job regulations. The behavioural variables affect only the informal systems, not the formal system. This basically economic and well-thought-out view of the two authors, *Dunlop & Flanders*, has been criticized by most consequent authors. Even though the actors and their connections are incorporated, behavioural variables, for instance, human motivations, objectives, among others, are absent. Flanders believes that IRS personal, or rather in the language of sociology uncreated

relationships have their significance for both the workers and their management except they fall outside the scope of a formal system of industrial relations. (*Flanders, 1965*).

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*Bain and Clegg* note that in other cases behavioural variables may in some way create a small role as Dunlop puts it and in other cases they may be of the highest significance. For this reason, they cannot simply be done away with a blanket of a theoretical assertion: whichever methodical framework of industrial relations which appears to be complete, ought to allow them to be part. (*Bain & Clegg, 1974*).

*Hyman*(1975) thinks that Dunlop and Flanders had an in-depth analysis. On the other hand, he argued that the way the above-named scholars (*Dunlop and Flanders*) defined industrial relation, as a restrictive manner. According to him, this narrowness has the unwanted repercussion that, what IR is all about is the safeguarding of solidity and suppression of conflict in a given industry. (*Hyman, 1975*)

According to *Hyman*, the centre of attention of *Dunlop and Flanders* is about how any conflict is controlled and contained. It is therefore, not on the progression through which discrepancy and any form of disputes is generated. He argues that a conservative tendency can be reinforced by the suggestion that the process of an industrial relation system is naturally at work to maintain stability and equilibrium. Hyman further states that the various institutions and procedures are compatible and well-integrated and that difference is one of the best ways to correct wrongdoing. *Hyman* thinks that matters stability and instability might be considered to be of equal importance as contributions of the industrial relation systems. He insisted that the definition of job regulation as positively by *Flanders* has broadened to include sources of conflict.

According to *Salamon, Michael* (2005), labour-employer relationships have become complicated than they were in the recent past and have been given a critical notice because of widespread

labour unrest. In the circumstance, a clear understanding of the factors which make for this social and political discontent and which is likely to remove it would be a satisfying experience for anyone concerned with industrial harmony.

The last but not least critic is Kelly, John (2008). Kelly analyzes the concept of industrial relation where he says it has a far reaching meaning and connotation. In the strictest sense, it refers to employer-employee relationships, that is, the relationship which comes as a result of the day-to-day association of management and labour.

It should be noted that there is no one agreed definition of industrial relations. However, all the descriptions given by different scholars revolve under similar activities.

In practice, trade unions are dilapidated, and fewer companies have industrial relations functions. The number of educational programs in industrial relations is therefore dwindling, while fields such as human resource management and managerial behaviour grow. The significance of this occupation, however, is stronger than ever, and the instruction of industrial relations remains of the essence. The main challenge for industrial relations is to re-establish these relations or rather connections with the wider intellectual, policy, and business worlds. (Kelly John, 2008)

A timbre industrial relations system, is one in which an interaction between management (maybe through their associations) and employees (and their representatives) on the one hand, and between them (employers and employees) and the State on the other, are more in agreement and supportive than disagreeing. This important aspect establishes a favorable environment to economic effectiveness and the inspiration, efficiency and growth of the employee and generates employee loyalty and mutual trust.

## **1.2. The Kenyan Context**

This part will mostly dwell into the economic and political aspect of Industrial Relations System in Kenya, focusing on how the two have helped in growing and developing of IRS in the country.

Politics have, in some way, contributed towards the development of IRS in Kenya. This goes back even before Kenya gained its independence. There are leaders who spearheaded the development of IRS in Kenya. Tom Mboya was the first secretary-general of the Kenya Local Government Workers Union, one of the Kenya Federation of Registered Trade Unions (KFRTU) affiliate unions. He built up this union the time he was working as a health inspector for the Nairobi City Council. Tom Mboya later on replaced Aggrey Minya in 1953 as KFRTU secretary-general and, on later date, in 1955 the name of the trade union was changed from KFRTU to the Kenya Federation of Labour (KFL). KFL and its leaders made it their task to struggle for workers' rights and political freedom as well, as some of its politicians had been arrested. (As per Central Organization of Trade Union of Kenya site, 2019)

In 1955, the Dockworkers had a strike which paralyzed most of the operations at the port of Mombasa (Kenya). Mboya, being the KFL secretary-general negotiated on behalf of the Dockworkers and won them a 33% pay increase. This is viewed as one of the first major success in Kenya's trade union movement; as it brought forward the first great opportunity for a trade union leader to successfully achieve full representation of workers in the solving of a strike.

Dennis Akumu and Ochola Mak'Anyengo former allies of Tom Mboya, decided to challenge him simply because Tom Mboya had formed the Nairobi Peoples Convention Party which he (Tom Mboya), used it as a ticket to be elected to the Legislative Council, which was held in 1957 in the first-ever direct elections of Africans to Kenya's legislature. Dennis Akumu and Ochola Mak'Anyengo accused him of aligning the Kenya Federation of Labour with the West against the non-aligned position which African leaders had taken on the then raging ideological cold war between western countries.

Tom Mboya became Minister for Labour in a new coalition government, in 1962, which brought together the Kenya African National Union (KANU) led by Jomo Kenyatta (who later became the first president of the Republic of Kenya) and the Kenya African Democratic Union (KADU)

led by Ronald Ngala. KANU and KADU were the two main African parties at that time. Tom Mboya relinquished his KFL's secretary-general's post during that process to his most trusted lieutenant, one Mr. Clement Lubembe who later on became the object of opposition from the Mak'Anyengo-Akumu camp in the KFL.

There were challenges faced during this particular period, as there was competition amongst labour leaders which almost led to a fall of the trade union movement as several other groups were created. Arthur Ochwadda, who was the deputy of KFL under Mboya, set up the Kenya Trades Union Congress in 1958. Together with other critics of Mboya, Ochwadda opposed Mboya's close relations with American and European trade union organizations. Examples of these organizations were the American Federation of Labour –Congress of Industrial Organizations (AFL-CIO) and the International Confederation for Free Trade Unions (ICFTU). (COTU-K site, 2019).

Jomo Kenyatta, who was the first president of the Democratic Republic of Kenya, became Prime Minister after Kenya gained its independence on 12<sup>th</sup> December 1963 from Britain. With that, Mboya became Minister for Constitutional Affairs in a government formed by Kenya Africa National Union (KANU) after the party had won the general election conducted in May that year. By December the following year, Kenya Africa Democratic Union (KADU) had dissolved itself and merged with KANU before Kenya became a Republic on 12<sup>th</sup> December 1964. Jomo Kenyatta became the Kenya's first President, while Mboya became Minister for Economic Planning.

On of the mandate when Central Organization of Trade Union of Kenya was first started/formed, was to come up with a training college for trade unionists, but this was after the leadership on Tom Mboya as the Secretary-General of COTU. This came during the administration of Juma Boy. After the construction of the labour college, it was named after Mboya. It is currently called Tom Mboya Labour College, and it is in Kisumu, former Nyanza

Province of Kenya. Funding for building the college was hard to come by and work on the institution stagnating at one stage, but through the efforts of Juma Boy to get funding from abroad and a levy on affiliate member's unions by the authorization of the government on November 1976, COTU was in a position to raise KShs.20 million to build Tom Mboya Labour College. Tom Mboya Labour College was officially opened on 14<sup>th</sup> January 1983 by the then President Daniel Toroitich Arap Moi, (the second president of the Republic of Kenya). The first students to be enrolled at Tom Mboya Labour College came in the year 1984 and since then, the College has slowly come up with a curriculum that later on received its registration by the Ministry of Higher Education Science and Technology currently the Ministry of Education to offer both Certificate and Diploma in Information Technology and as well as in Business Administration. There are plans to upgrade the college to a level where it will offer degrees in trade union-related courses, a move that is still being debated. (As per COTU-K site, 2019)

It was in the year 1993 that Mugalla demanded the sacking of the late George Saitoti who was the then Minister for Finance. This was because the workers accused the late Saitoti of the country's economic problems. Mugalla also requested for a 100 per cent wage increment for workers. During that time, majority of the unions participated in a meeting of different secretaries-general from different trade unions, as well as the shop stewards at Central Organization of Trade Union of Kenya headquarters which is in Nairobi (Solidarity House), and supported for Mugalla's call for a countrywide strike if their demands were not met. COTU then called for a strike, and this was somewhat because the government had implemented a program (structural adjustment programme) which were being imposed on third world countries by the International Monetary Fund and the World Bank, as a condition for continued aid. (COTU-K site, 2019)

Unfortunately, this planned strike was declared illegal by the government and the second president of Kenya, Daniel Toroitich Arap Moi did not attend May Day celebrations (Labour

Day) that year (conducted 1<sup>st</sup> May of every year after independence in 1963), the first incidence since independence, that a president had not joined workers on this important day. In his place, Moi was represented for the Labour Day celebrations by his Minister for Labour, Phillip Masinde, who was booed by the workers during the celebrations and was forced to walk out. This came after Mr. Masinde announced for a 17% pay increase in place of the 100% as anticipated and demanded by COTU. (COTU-K site)

Expansion of protective labour regulation into the informal sector, merging and redrafting of the different labour acts in order to create a user-friendly and diversified labour legislation, coming up with an Industrial Court of Appeal to conquer contradicting jurisdiction between the High Court and the Industrial Court, among others, were the main objectives of the tripartite taskforce's review. The tripartite taskforce officially gave out five new draft texts to the then Attorney General Amos Wako in April 2004. Most of these Acts were enacted in 2007 and 2011. Mwai Kibaki, after his presidential election, (in 2013) said that his government was going to create 500,000 new jobs during its first 100 days in office. Primary education would be free as well. New housing units were supposed to be built, as they were in the plan. He also talked about developing of a new constitution, which was on a later date enacted in 2010.

It was identified that COTU was in the list of groups that advocated for a new constitution. COTU participated in the Constitutional Review Committee that the then-president, Mwai Kibaki selected. This was, under the leadership of Professor Yash Pal Ghai as the chairman for the drafting of the new Constitution. The team under the guidance of Ghai came up with a draft Constitution after meetings that were conducted in several months. The draft constitution was to be put to a national referendum. President Kibaki however, had the constitution altered even before it was put to a referendum. In 2005, President Kibaki put his draft Constitution for a referendum, but the citizens of Kenya voted. (COTU-K website, 2019)

One crucial aspect to be identified is that amiable and peaceful industrial relations existing between the employer and employee are imperative for upgrading the productivity and thus the economic growth of the country. The word management, means getting the things or activities done with the help of other people. Nobody can debunk that people constitute a significant component of an industrial organization. The good results of an enterprise always reflect the notable performance of all concerned that is; the entire staff of the organization.

When it comes to economy, Kenya is estimated to have the highest number or rather percentage of informal sector employment among nine countries covered in report by the United Nations' Economic Commission for Africa, which is considered to be a new report. The following year after independence (independence was in 1963) in 1964, the report promoted rapid economic growth through public investments in infrastructure, by supporting smallholder agricultural production, upgrading living conditions and providing incentives for private industrial investment, (by *Journal on Labour Productivity in Kenya*).

Kenya's Gross Domestic Product (GDP) has grown over the years. For instance between 1963 and 1973, it grew by 6.6 per cent and this was experienced annually. Going to the Agricultural Sector, production was seen growing at an average of 4.7 per cent per annum during that particular period. Nevertheless, notwithstanding major achievements of high growth and development objectives, Kenya's economic performance was below its potential during the 1980s and 1990s. Kenya's worst economic performance was witnessed around 1991 – 1993 since independence. GDP growth deteriorated and agricultural production went down at an annual rate of 3.9 per cent. As indicated by a *Journal on Labour Productivity in Kenya*. From 1997 to 2002, the economy is estimated to have grown by an annual average of only 1.5 per cent, which was below population growth, leading to a fall in per capita incomes. Due to improper agricultural, land and industrial policies, Kenya's poor economic performance between the 1980s



and mid-2000s was largely witnessed which was aggravated by poor international terms of trade and governance weaknesses. (Odero et al, 2015)

Economic growth began to recover with real Gross Domestic Product growth of 2.8 per cent in 2003, followed by 4.3 percent in 2004, then 5.8 per cent in 2005, then 6.1 per cent in 2006 and lastly, 7.0 per cent in 2007. However, the economic outcomes of the violence that broke out after the 27 December 2007 general elections, was composed of drought and the global financial crisis, which declined growth rates to less than 2.0 per cent in 2008. There was modest improvement with 2.6 per cent growth in 2009 and the final 2010 growth number was anticipated to be about 5.0 per cent. In 2012 and 2013, Gross Domestic Product growth was 6.9 per cent and 5.7 per cent respectively. GDP estimates disclosed economic growth of 5.3 per cent in 2014 and 6.5 per cent 2015. Kenya had a Gross Domestic Product of 69.98 billion U.S dollars in 2015, which made it the 72nd largest economy in the world. Per capita GDP was estimated at 1,587 dollars. (*Odero et al.*, 2015).

Informal sector in Kenya is the biggest employer of majority of workers. Employment here is estimated to be standing at the informal at 77.9 per cent of ahead of countries like Rwanda which comes in second place, at 73.4 per cent, Uganda being the third with 59.2 percent followed by other African countries. Egypt offers 51.2 percent, Liberia 49.5 percent, Madagascar at 51.8 percent, Mauritius 9.3 percent and South Africa 17.8 percent of the informal sector. The above study which came into force on June 25th, 2015 in Nairobi. The study looked at informal employment out of the agricultural sector with the all-inclusive focus being industrialization through trade.

The report said in part that, most of workers in the informal sector in both Kenya and Rwanda are women at 80 percent. This is estimated to be three out of four of the ones employed. The study accredits the high level of informal sector workers to inability of the formal sector to retain the huge number of job seekers.

This affects the stability of IRS in Kenya as it is hard to recruit non-members who work in the informal sector. Most of the no-members have temporary jobs. The data released by the Kenya National Bureau of Statistics (KNBS), includes that only 78,400 new formal jobs were created in the economy in the year 2018 compared to 114,400 jobs created in 2017. The failure or reduced number in the creation of formal jobs in the Kenya has raised questions overtime over what is considered as equitable distribution of the increased dividend among the Kenyans having in mind the fact that the economy increased in development and growth over the same time by a rate of 6.3 per cent being regarded to be the highest rate since 2010 when Kenya set an 8.4 percent growth.

Kenya National Bureau of Statistics accredited the rigid economic performance to high investment in infrastructure and the fast expansion of agriculture, fish and forestry sectors which, when added together, recorded a 6.4 per cent growth. (Kenya National Bureau of Statistics)

Out of the total 14.3 million employees registered in the year 2014, a total number of 2.5 million employees were from the formal sector while those in the informal sector were 11.8 million employees. This is a open representation of a share of 17 per cent of employees being from the formal sector while 83 per cent being from the informal sector. The insight acquired from this analysis is that while there is a number of employees in both the formal and informal sectors are increasing, the available shares seem to be remaining stagnant at an average of 18 per cent for formal workers and around 82 per cent for informal workers. We can therefore conclude this, by saying that the informal sector is providing more job opportunities to Kenyans than the formal sector. For that reason, the government of Kenya should try to look for ways in making sure that the informal sector workers' rights are protected and they are fully given favorable and decent working conditions to help in growth of the economy of Kenya.

According to a report by World Bank, as illustrated by Census and Economic Information Center (CEIC), Kenya's Unemployment Rate increased to 9.31 percent by 2018 (December), from the previously reported number of 9.29 percent in December of 2017. According to CEIC, Kenya's

Unemployment Rate is updated yearly, and it is available from December of 1991 to December of 2018, with an average rate of 9.68 percent. The data reached an all-time high of 10.10 percent in December 2003 and a record low of 8.90 percent in December 1991. (*World Bank*, 2018).

In the latest reports, Kenya's Population reached 47.80 million people in Dec 2018. This year, 2019, the number is estimated to have arisen. Kenya carries its nationwide census after every ten years. The last census was conducted in 2009. This year, another one is expected to be carried out and it is predicted that there could be a slight increase in population from the one provided in 2018. (According to *KNBS*) Monthly Earnings of Kenya stood at 591.84 US dollars in June 2018. The country's Labour Force Participation Rate dropped to 66.30 percent in December 2018, says CEIC.

With the above mentioned rate of unemployment in Kenya, it gives the government challenges when it comes to the growth of the economy. The government is still in the verge of trying to create more jobs for its population. If the economy of a country fails to grow and instead just lags in one place, then it means that IRS does not reach its maximum potential, since it's a combination of three parties or the three actors who are the government, employers and employees and if one of the three actors is affected, then the rest will suffer a blow in one way or the other.

### **1.3. Statement of the Problem**

Kenya attained its independence in 1963. Industrial Relations System has existed in Kenya even before independence. There have been set of laws that govern the existence of IRS in Kenya to protect workers' rights, protect employers' interests and government on the other side to oversee its smooth running. Some of these laws include the Independence Constitution, established after 1963 which and replaced with the new Constitution of Kenya passed in 2010 and came into effect in 2013 after the general elections. Labour Laws have also been set aside to give depth explanation on these rights. Despite the creation and existence of these Laws, their significance

is only “*on papers*” as they are not put into practice. The Constitution of Kenya on the other hand has “*good laws*” but the enforcing bodies have showed laxity on their part, as most of these laws are broken or rather abused but they take little or no effort to correct this. For example the issue of equality and non-discrimination is covered by *Article 27* of the Constitution whilst the issue of right to fair labour practices is outlined in *Article 41* but cases on breaking of the same have severally been reported. The research will look into above named challenges among others in various stages and help come up with possible solutions/ recommendations.

#### **1.4. Research Questions**

The following will act as the questions that we need to ask ourselves in the course of this research so as to give as directions on which way to follow in to strengthen IRS in Kenya;

- a. When was IRS first established in Kenya?
- b. What prompted the establishment of the IRS in Kenya?
- c. What are some of the challenges affecting the IRS in Kenya?
- d. What is the ongoing debate on the existing laws in Kenya?

#### **1.5. Research Objectives**

The principle objective of this research is to try and present the exact picture of the industrial relations system in Kenya.

##### **i. Specific Objective**

- a. To identify when it was first established,
- b. To identify what prompted its emergence/ establishment,
- c. To know how it has evolved over the years.
- d. To analyze the main debate going on the existing Laws.

#### **1.6. Significance of the Study**

The results of the study will be of great importance to the following;

**The Government:** The information given throughout this research will enable the government initiate collaboration between employers and employees to help them create better working environment, working conditions for the purpose of boosting the economy and strengthening the country's socio-economical affairs.

**Employers:** The result of the study will help the employers understand that working hand in hand with the government and the workers through trade unions is to their benefits as organized workers, better wages; favorable working conditions among others will boost workers' morale to work. Good productivity will lead to higher profits which in turn will contribute to organizational growth.

**Employees/ Workers:** The study will provide workers with vital information on how they can fully maximize the availability of IRS for their career and personal growth.

**Kenyan Citizen (society):** Understanding how IRS works in a specific country is important. This study seeks to come up with new ways of developing knowledge, skills and attitude, thus preparing an individual citizen of Kenya to know their rights and duties before contracting an employment relationship with a specific employer and during their time at work.

### **1.7. Methodological Approach and Sources of Data**

Obtaining the information essential to this study will be mainly based on the collection of secondary data, through bibliographic and documentary research related to the subject in the world in general, and particularly in Kenya. Emphasis will be given to documents/ articles/books that highlight issues to do with the current state of industrial relations system in Kenya. Reports from the Government of Kenya, Central Organization of Trade Union of Kenya (COTU-K), Federation of Kenya Employers, National Labour Board of Kenya among others that highlight the issues of the existence of Industrial Relations System in Kenya will be used. Other entities and organizations that care for the cause of industrial relations will be considered to ensure that an ample research is conducted. The data collected will be analyzed and presented quantitatively

and qualitatively, drawing conclusions and possible recommendations that aim to strengthen the industrial relations system in Kenya.

### **1.8. Organization of the Study/ Research Structure**

This research will be structured in four chapters. The first chapter will be an introductory chapter, which will give an introduction of the research topic, that is, the meaning of IRS, what Sidney and Beatrice Webb have to say on IRS as well as Dunlop's concept on the same. The main focus however, will be on Dunlop. This chapter will also look at IRS in Kenya which is our country of research looking into the political and economical aspects. Statement of the problem, significance of the study among others will be seen in this chapter.

The second chapter will lay down basis of this research as it will include discussions on evolution of labour laws, basing on the labour movement, labour laws before Independence, after Independence and the new labour laws which are the 2007 labour laws.

Institutions and rules governing IRS in Kenya, the labour actors and social dialogue/ tripartism will be discussed in the third chapter. Also, the current debate about the existence of laws in Kenya, will be looked into considering the employers and the employees' views on the existing laws. This chapter will mainly be on Construction of IRS and the current debate on the existing laws.

The fourth chapter, which is the last chapter, will be a concluding chapter which will talk about the benefits or IRS in Kenya as well as the problems facing IRS.

## **2. CHAPTER TWO: EVOLUTION OF LABOUR LAWS IN KENYA**

The beginning of this chapter will talk of the general idea on evolution of Labour Movement and Labour Laws followed by the order on how other laws were formed in the country from before the country gained independence, after independence and the new laws which are the 2007 Labour Laws. With the amendment of the previous laws to enactment of the new laws, a couple of sections have been outlined that involve different changes and the new laws that were introduced as well as the Acts that changed their names to fit the laws they contain.

### **2.1. Before Independence**

The practice of Labor law sprouted up during the 19th century when there was need for the colonial government to create and pass legislation that would look in to the relevant and enough supply of affordable labor to run the existence of companies in the fields of agriculture, industry as well as other sectors like the service sector. Towards the middle of the 20th century, with the help of industrialization, an organized trade union movement was well formed.

The establishment of the first wage earners associations in Kenya can be traced back to the early 1940s and soon after the end of Second World War. There was the creation of the first trade union regulation which came up in the introduction of Ordinance No. 35 of 1939 that wanted all the small organizations to apply for registration which was not guaranteed. They could either be given or in some instances, be denied. This would happen depending on whether they had lawful conducts consistent with government policy. The Ordinance also allowed any group of a given number of seven people to form a trade union and fully operate as one as soon as it was registered. Annulment of registration under the Ordinance could not be subjected to appeal or open to question in a court of law, this is according to writer *Aluchio1998*.

The government of Kenya in 1948, brought forward Trade Union Labour Officer, in order to gain complete hold on the wage earners organizations. This was to be placed to the Labour

Department with the duty to establish responsible unionism, (according to *Ananaba 1979*). A more explained piece of legislation was ordained in 1952 for Trade Unions, but important omissions were witnessed. It lacked essential requirements for successful functioning of trade unions. It did not authorize peaceful picketing or even offer immunity against reparation as a result of strikes. However, the government encouraged the creation and formation of associations like the staff associations and committees like the works committees as they encouraged its wellbeing to restricting workers' organization to economic peremptory alone, and they did not have even the striking powers.

The rigid control of trade unions was kept by the colonial government until the end. This in spite of, the movement was in a position to grow both in numerical strength and power. the total number of people following was about 155,000, by the time Kenya was gaining its independence in 1963. Also in existence were 52 trade unions, with four centers which had already been established and registered, including the following; Kenya Federation of Registered Trade Unions (KFRTU), East African Trade Union Congress (EATUC), Kenya Federation of Labour (KFL) and Kenya Africa Workers Congress (KAWC) amongst others. Industrial disagreement came about not purely from traditional trade union activities, but as well as from the movement's political power in the fight for freedom from colonial rule, specifically after some political leaders had been placed in detention.

Nevertheless, on the phenomenon of independence, both employers' associations and trade unions, agreed that it was important and also necessary for Kenya, which was then referred to as the young nation to make economic process. The main aspect was that, capital and labour should work together in harmony: all those reported cases of strike and lockout had to be dealt with or done away with completely. In October 1962, as a result of all that, a landmark was created with the signing and coming to force of the Industrial Relations Charter by the government of Kenya. Also present, were the association of employers called the Federation of Kenya Employers and



the Kenya Federation of Labour, the forerunner of COTU (K), the Central Organization of Trade Unions (Kenya) (workers' representatives).

The Industrial Relations Charter gave out the agreed powers of management and trade unions and their given obligations in the area of industrial relations, as it expounded on a model recognition agreement to mean a lead to all the parties involved, and it came up with a shared Dispute Commission. The Industrial Relations Charter has been revised twice since then, but remained the basis for social dialogue and labour relations in Kenya throughout the years. With the setup of an Industrial Court in 1964, one additional basic cornerstone was laid for the development of cordial conflict resolution in Kenya.

## **2.2. After Independence (1963)**

The evolution of tripartism and voluntary Industrial Relations just before independence followed decades of adversity between the colonial authorities and the restive labour movement, whose protests and struggle for freedom and labour rights were brutally suppressed by the authorities (*Aluchio, 1998*).

Trade unions' response was equally uncompromising, as they embarked on strikes and other forms of protests across the country. These protests were met with the stiff hand of the authorities, determined to quash worker militancy at all costs. Strikes were banned while labour leaders were imprisoned, but these actions generally failed to intimidate the labour leaders or arrest the growing discontent with the colonial authorities. The vexed industrial atmosphere was disturbing enough that it created anxieties in colonial circles about the political role of the labour movement and how it might affect pending political Independence. (*Hagglund, 2008*)

The transition from the chaotic relations of the period was a dramatic reversal of acrimonious labour relations in favour of what is today arguably one of the best institutionalized labour market governance systems in Africa. In other words, the employment relationship in Kenya

evolved in the voluntary tradition, by which the government provides the legal framework within which the parties freely undertake to relate among themselves in a manner that promotes labour, peace and nation-building. It was this resolve to address the labour challenge in a constructive manner that inspired the government, employers and labour to agree on a joint commitment towards industrial harmony and peaceful relations for national development (*Aluchio*, 1998).

This consensus led the parties to adopt an Industrial Relations Charter, in October 1962. The charter established organizational rights for workers, and committed the parties to tripartite consultation, collective bargaining and peaceful settlement of trade disputes. The historic agreement was without precedent in Africa, and could be seen as an evidence of the commitment of the parties to use industrial relations as a strategic tool for national development. Following the charter, the government established in 1964 an Industrial Court to facilitate the peaceful settlement of trade disputes. The charter itself was a voluntary agreement.

Nevertheless, it represented a genuine commitment of the tripartite parties towards cooperation and peaceful relations in the workplace. The record on trade disputes for the following years attests to this commitment. The number of strikes progressively declined, from 285 in 1962, to 250 the following year, and down to 200 in 1965. By 1968, the number of strikes had declined to 93 (*Aluchio*, 1998). Overall, public policy and the institutional arrangements for industrial and employment relations reflect this thrust of voluntarism and tripartite cooperation.

Right from independence, the legal and institutional framework for employment relations recognized freedom of association and the right to collective bargaining.

In fact these rights are entrenched in Kenya's constitution and form part of the foundation of employment relations in the country. However, changing economic and political conditions had from time to time created conditions that tended to undermine these rights. For example public policies of the 1990s led to the denial of labour rights in the industrial zones, while the right to collective bargaining remains unrealized in much of the public sector.

After independence, in 1965, the Government of the Republic of Kenya passed an act referred to as the Trade Disputes Act to help regulate Collective bargaining interaction in both the private and public sectors. Most trade unionists did not like that idea as they felt that the Trade Disputes Act did not make any effort to change the constraining legislative framework which had long survived even before the coming of the Independence (before 1963). At that time, Tom Mboya was the Minister for Labour and he felt that the trade unions had the responsibility to take a notable stand in development during the period of post-independence.

The Act mostly served to put a number of boundaries upon collective bargaining activities of different trade unions at that time.

The Trade Disputes Act was later on amended in 1971 to wider powers to both the Minister of Labour and the Industrial Court over the collective bargaining process. The Trade Disputes Act also contained provisions for a compulsory check-off System as a way of paying back for the restrictions placed upon their right to strike. The Act provided that employers with more than four union members were in charge of remitting monthly union dues directly to the main office of the union. This provision was considered to be exceedingly important for the growth and stability of the trade union movement in Kenya.

The Act sets out the circumstances under which a strike shall be illegal. Only two of these circumstances of them are considered legal; The first is, if a grievance has been referred to the Minister and the Minister fails to direct it to among others, conciliation or conduct an investigation within three weeks (21 days). The second condition is where the Industrial Court has made its award but the employer refuses to put into practice and as such the union has depleted all available procedures. Notwithstanding the foregoing, however, the Minister has the authority to proclaim any genuine or even a threatened strike to be illegal or to require the parties to act in accordance with the given award.

“COTU was among the first pressure groups to push for a new constitution. It was one of the organizations that constituted the Constitutional Review Committee that Kibaki appointed under the chairmanship of Professor Yash Pal Ghai to draft a new constitution. After months of meeting at the Bomas of Kenya centre in Nairobi, Ghai’s team came up with a draft that was to be put to a national referendum. But to COTU’s and many Kenyans’ dismay, Kibaki had the document altered before it went to the referendum. The consolation for COTU and other supporters of the Bomas draft was that the public ended up voting against Kibaki’s draft when it was put before a referendum in 2005.” (COTU-K website)

A Taskforce was appointed by the Attorney General (Amos Wako) in May 2001 to review the Labour Laws (Gazette Notice No. 3204), within an International Labour Organization project. The Taskforce was mandated with the following duties:

Among others, examining and reviewing all the provided labour laws inclusion of Trade Unions Dispute Act, CAP. 234 and the Employment Act CAP.226) among others and also make appropriate recommendations for suitable legislation to make improvements or rather replace any of the labour law statute. Provide for recommendations on proposals for amendment of labour laws to guarantee that they are consistent with the Conventions and Recommendations of the International Labour Organization to which Kenya is a party. The Taskforce was also mandated with making recommendations on such other matters related to or supplementary to the foregoing.

The key issues were:

To extend the application of protective labour regulation into the informal sector; merging and redrafting the different Acts in order to come up with a comprehensive labour legislation for benefit the people;

The introduction of an Industrial Court of Appeal to overcome contradicting jurisdiction between the High Court and the Industrial Court;

- a. To make a review on the registration procedures and trade union domination based on the Trade Unions Act (Cap. 233) related to the ratification of the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87);
- b. Set up an administration system which promotes participation and democratic involvement of the social partners.
- c. To review any likely limitations of excessive powers and influence of the Minister for Labour in industrial relations.
- d. To create an efficient labour administration system this will be capable of effectively enforcing the laws including the new laws that were to be formed.
- e. Try to review the procedures for conducting elections for trade union officials, and come up with a system of directly electing workers' representatives.
- f. To establish an affordable, workers social insurance scheme, complementing the National Social Security Fund and not contribution based.
- g. To promote equity and equality in employment by incorporating anti-discriminatory (gender, HIV/AIDS) provisions into the Employment Act (Cap. 226), and as well as provisions against sexual harassment.

The tripartite Taskforce, comprising of members from the government, the trade unions (COTU) and the employers organization (FKE), officially handed over five new texts to the Attorney General in April 2004. The five drafts were replaced by the existing legislation on Labour Law. These drafts relate to the following matters:

**Draft on the Employment Act:** This act was to clearly define the fundamental rights and freedom of employees, to regulate employment of children amongst others. This act contains provisions on freedom from discrimination and from sexual harassment. Provisions on freedom from forced labour expressly domesticated ILO Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No.105), both ratified by Kenya in 1964.

**Draft on the Labour Relations Act:** This act was put in place to deal with all the registration of formed trade unions or those intended to be formed and also the employers' organizations (associations) or federations, to bring promotion of sound labour relations through the protection and generation of freedom of association, the support of helpful collective bargaining, good for social justice and economic development among other interrelated matters.

**Draft on the Labour Institutions Act:** This act was to include the establishment of Labour Institutions, to provide for their functions, powers and duties. This act also introduced a system of labour courts with exclusive jurisdiction on labour matters. The act establishes Subordinate Labour Courts, as well as a National Labour Court. This act would also create a National Labour Board, whose main duty is to advise the Minister on labour legislation and matters.

**Draft on the Occupational Health and Safety Act:** This act was to provide for the safety, health and welfare of persons employed, and all persons lawfully present at workplaces and related matters.

**Draft on the Work Injury Benefits Act:** an act providing for compensation to employees for injuries suffered and occupational diseases contracted in the course of employment and related matters. These texts do now have to follow the path towards adoption

After repealing all the above legislations, the Task Force came up with the following five labour laws which have since been enacted: these laws are as follows;

### **2.3. New 2007 Labour Laws**

Central Organization of Trade Union of Kenya (COTU-K) was the first national organization in 2007 to warn the government that there would be skirmishes and violence if Kenyans went to that year's general election under the existing laws. These predictions would turn out to be true when a prediction of more than 1,000 people lost their lives and more than half a million were rendered homeless by the violence that followed the declaration of Kibaki as the winner of the

2007 presidential election against the protests of supporters of his main opponent, Raila Odinga. The site further explains.

Through the mediation of former United Nations secretary general Kofi Anan, the post election violence of 2007/2008 ended and Kenyan leaders were able to agree on a peace formula that led to the setting up of a grand coalition government in which Kibaki retained the presidency and Odinga became Prime Minister. COTU would be among the earliest campaigners for the draft constitution once it had been drawn up by a committee of experts that Kibaki, in consultation with Prime Minister Odinga, had appointed, headed by Nzamba Kitonga.

During that time, the draft constitution could only go to a national referendum until 2010. The secretary general of COTU, Francis Atwoli had started his campaigns the previous year in different parts of the country advocating to workers to vote in the new constitution. One of the reasons why COTU was fighting for the new constitution, was because it a clause that provided for the creation of specialized court that had the same status as that of the High Court that was supposed to deal with labour relations: The Employment Labour and Relations Court. The court would guarantee rights of members of the IRS, that is the employers, employees and regulators. After the 2010 Constitution was passed, President Mwai Kibaki swore in its first 12 judges in 2011. This happened close to one year after the new Constitution was voted in by the vast majority during the national referendum. (COTU website, 2019).

The five laws enacted in 2007 included (a) The Employment Act; (b) The Labour Relations Act; (c) The Labour Institutions Act; (c) The Work Injury Benefits Act and (d) The Occupation, Safety and Health Act. The following is an overview of the labour laws promulgated in 2007 as one of a great leap forward in the area of industrial relations in Kenya. Labor laws have a uniform purpose: they protect employees' rights and set forth employers' obligations and responsibilities. They also have multiple functions. The primary functions of labor laws are to

provide equal opportunity and pay employees' physical and mental well-being and safety, and workplace diversity.

### **I. The Employment Act (EA)**

The EA is a substantial improvement over the old Employment Act (and also the Regulation of *Wages and Conditions of Employment Act*) which it replaced. The Act was passed on 22<sup>nd</sup> October, 2007 and it came into force of 2<sup>nd</sup> June, 2008. According to the preamble, it was passed in order to; Provide basis conditions of employment of employees, regulate employment of children and declare and define fundamental rights of employees among others. The said Act repealed *Employment Act Chapter 226* which started operating on 3<sup>rd</sup> May, 1976.

The law seeks to discourage the possible recourse to atypical forms of employment. For example, it provides that casual workers cannot be in this type of employment for more than 30 days (*in contrast to the 3 months in the old law*) of continuous employment. In such cases, the Act converts the phrase “casual employment” to “contractual terms” provided that all the requirements are met. Notwithstanding this forthright provision of the law, the question remains whether employers will apply it, or whether the enforcement authority will courageously enforce it.

The Act also extends the maternity leave period to 3 months, and contains a provision which recognizes two weeks' paternity leave for fathers. As part of eliminating discrimination, the act requires employers to promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.

The act identifies grounds such as race, color, sex, language, religion, political or any other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status, or HIV status as not constituting grounds for discrimination in employment.

Another innovation is the harmonization of the provisions on child labour. Therefore basing on the appropriate definition of who a “child” is as contained in the *Children's Act*, the Employment



Act (EA) raises the age of a child from 16 to 18 years. The Act also provides for an insurance benefit scheme for employees who suffer redundancy, while also safeguarding workers' dues in the event of an employer's insolvency. Nonetheless, looking at the case of the unemployment insurance scheme, the Act gives the Cabinet Secretary in charge of Labour the volition in making rules that apply to certain employers under a well set national insurance scheme or any other private scheme which is written by a private insurer approved by the cabinet secretary.

It is important to note that employers have challenged several aspects of this particular law, claiming that the law does not give enough flexibility in the current labour market realities. However, it remains to be seen whether the provisions will in practice incapacitate employers' ability to achieve any desirable flexibility in manpower deployment. The Constitution of Kenya, 2010 is considered to be the most important book with set of laws. Employment Act comes at the second place primarily because it outlines the basic minimum terms and conditions of employment. Any employer is mostly at liberty to do and give more but doing less than what the Employment Act states may lead to an employer falling into the hands of the law.

In simple terms, the Employment Act set standards to what is acceptable in regards to terms and conditions of employment and conduct of parties in any available employment relation.

There has been a debate in 2019 to amend some sections of Employment Act and replace them with others or delete them completely. The debate was conducted in the Kenyan Parliament and termed as *The Employment Act (Amendment Bill 2019)*. Some of the sections to be amended are the following; example Section 2 (d) of No. 11 of 2007 gives the definition of the word "disability" and in the amendment therefore, the definition is supposed to be deleted ad substitute it with a phrase that the meaning of "disability" is assigned to it in the Persons with Disability Act, 2003. Section 2 is one of the examples that are proposed to be amended in the Employment Act.

These amendments will see so many changes if the bill will be passed as stated in the Kenya Employment Law website. Some of the sections that will undergo the changes are those on overtime, part-time employees, employment of foreigners among others. (As published on 16th April, 2019)

## **II. The Labour Relations Act (LRA)**

Among others, the purpose of The Labour Relations Act is to promote fair labour practices as stipulated in Article 41 of the Constitution of Kenya, 2010, as well as peace, economic and social development among others. Its preamble talks about the main objectives of the Act which include the promotion of sound labour relations by a way of protecting and promoting the freedom of association (Article 36 Of the Constitution of Kenya, 2010) and also encourages effective collective bargaining among others. The LRA represents the main legal foundation for collective bargaining and labour relations. The Act simply concerns itself with the constitution of the relationship between the employer and the employee and the relationship can be both economic and legal. The new law combines two earlier laws, namely the Trade **Disputes Act** and the Trade **Unions Act**. In many respects, the Labour Relations Act contains substantial improvements, particularly in creating more efficient and responsive operational procedures to promote employment relations and labour peace in the country. Specifically, it promotes the collective bargaining process, by encouraging the parties to engage in good faith bargaining. For instance, it is a must for the parties to the negotiation to disclose information that may be of importance by the other party, mainly if such information clarifies a particular party's bargaining position. It also reaffirms, even if controversial, the role of the Industrial Court in the registration and approval of collective bargaining agreements (*Fashoyin, 2007*).

The provisions on dispute management are intended to assure prompt and speedy resolution of disputes. Thus, a dispute lodged with the Ministry of Labour must be settled within 30 days. If the investigation or conciliation role of the ministry fails, the parties must take their dispute to

the Industrial Court, which also must make a decision within a reasonable time period. In other words, the law frowns at delays in a dispute situation, while protecting the rights of the parties. When a party to any dispute gives a specific notice to carry out a strike or lock-out, the party receiving the notice can, within the 7 days indicated in the Act, go to the Industrial Court and seek a certificate of urgency to interdict the issuing party from embarking on the strike or lock-out. This is possible especially when, whether the strike or lockout is outlawed under the Labour Relations Act or the party that gave out the notice has in one way or the other failed to participate in conciliation in good faith with na aim of resolving the dispute in question.

### **III. The Labour Institutions Act (LIA)**

The Labour Institutions Act was created to govern the establishment of different institutions in government and also provide for the institutions' duties, functions and also powers. The LIA is an innovation in the legal framework, as it creates a number of vitally important bodies for the constructive functioning of the labour market. One such institution, that is, the National Labour Board, seeks to strengthen social dialogue with an extensive directive on employment related matters, such as a review on general labour relations, on strikes and lockouts; the number of complaints lodged by employees against employers under the law relating to labour relations and vice-versa. Furthermore, the Board is authorized to advise the Minister on any matters relating to labour relations and trade unionism, as well as the labour inspection system and the administration of labour laws in the country.

Several of the provisions in the law are designed to strengthen social dialogue. For example, one key provision confirms the Wages Councils system which is the foundation for the meticulously important minimum wage. Thus, the law specifically anticipates a general wages council and an agricultural wages council. At the same time, the law supports sectoral wages councils only where this is deemed necessary by the Minister. However, majority of them, (the sectoral

councils) have become in active, mainly because, according to the Minister, as well as the parties, the collective bargaining tool is reasonably efficient in dealing with determining of wage in the industrial sectors (*Fashoyin, 2007*). The other thing that needs to be shown is the evidence that the periodic review of the minimum wage through social dialogue negotiations has contributed to ensure safe haven for workers, regardless of whether they are in formal or in informal type employment. The law also sets out for a reinvigorated Industrial Court, whose judges are ranked to the status of high court judges. In effect, it enhances the respect for the court. The court has expanded powers, including the power to order for the parties to share information or take part in the arrest and conviction of a disobedient party.

#### **IV. The Work Injury Benefits Act (WIBA)**

The WIBA replaced the **Workmen Compensation** provisions in the previous **Workmen's Compensation Act** of 1949 as amended. The new law disallows common law claims. Whereby these claims could be made under both the old Workmen's Compensation Act and common law. The Act spreads further an insurance cover and makes sure there is adequate compensation for injury and work-related complications or diseases regardless of the employer's insolvency. The new law provides for payment of injury benefits depending on the severity and/ or length of disability (*Bor, 2007*)

#### **V. Occupational Safety and Health Act (OSHA)**

OSHA is related to the Work Injury and Benefits Act. OSHA repealed the **Factories and Other Places of Work Act**. It seeks to secure safety and health for workers in every workplace, regardless of work being performed temporarily or permanently. The government of Kenya seeks to make sure that protection is spread beyond both the factory as well as formal and informal workplaces, putting into inclusion the self-employed employees in this law, going through to a larger section of the population of its citizens. The law is against employment of

children under the age of 18 years, mostly where their safety is at risk. Furthermore, it aims at promoting a safety culture in workplaces. The safety culture comes through education and training in occupational safety and health. The law supports entrepreneurs to set achievable safety targets for their enterprises. The targets will help them establish joint health and safety committees in the workplace, and to carry out annual safety and health audits.

The next chapter will mainly focus on what comprises the IRS. With these, we will look at institutions that make the existence of IRS, their roles, the actors of IRS as well as social dialogue. How important is the social dialogue to IRS in Kenya? And so on. Also in discussion will be the debate going on the new laws. What do the employers have to say about these laws? What about the employees?

### **3. CHAPTER THREE: CONSTRUCTION OF INDUSTRIAL RELATIONS SYSTEM AND THE RECENT DEBATE ON THE EXISTING LAWS**

For the construction of IRS to be achieved, a few elements must exist or instead be put into place. These elements come in the form of institutions and rules that guide the IRS, namely; the Employment Labour and Relations Court (formerly the Industrial Court), the Wage Councils, the National Labour Board, just mentioning but a few. These institutions play different roles as we will outline them hereunder.

#### **3.1. Institutions and Rules**

These are the institutions that exist to make sure that the IRS is in check: all the set-out rules and regulations are followed. These institutions also help in guiding the actors of the IRS as some of them are advisors to these actors.

#### **I. The Employment Labour and Relations Court (formerly The Industrial Court of Kenya)**

The Employment Labour and Relations Court (ELRC) is an Institution of Social Dialogue in Kenya. Social dialogue has been defined to include; exchange of information, consultation and others. (International Labour Organization)

Initially, ELRC was formerly an Industrial Court of Kenya and was created to deal with various problems or rather, cases related to employment and industrial relations among others. The players of social dialogue are the state, the employers and the employees and the Employment Labour and Relations Court play a vital role in facilitating this relationship. They mostly discuss issues about a common interest, particularly issues that involve socio-economic policies and more others.

The Industrial Court (ELRC) is established in accordance with Article 162 (2) of the Constitution of Kenya, 2010 and has the same status as the High Court of Kenya. The court is made up of the

Principal Judge and several other judges appointed by the President. Recommendation is made by the Judicial Service Commission before the appointment. The Industrial Court has original and appellate jurisdiction to hear and determine all disputes pertaining to employment and labour related matters. The court has the authority to preside over disputes relating to, or arising out of employment between either an employer and employee, or an employer and a trade union. It can also be between trade unions and employer organizations among others.

According to article 162 (2) of the Constitution of Kenya, 2010, the Employment Labour and Relations Court has power to make reinstatement or any other appropriate relief as the court may deem fit, declaration of rights among others. The court provides enforceable orders in accordance with the regulations made under the Act.

The Court might decide to recommend the use of alternative disputes resolution mechanisms like conciliation, mediation, arbitration among others, as a way of ensuring expeditious delivery of justice. Other traditional dispute resolution mechanisms in accordance with Article 159 (2) (c) of the Constitution, might also be used. The court may refuse to determine any dispute except for appeal or review if it is satisfied that there was no attempt to resolve the matter through alternative dispute resolution. The other power that ELRC has is to review its judgments, awards, orders or decrees as per the rules. Appeals from the ELRC are based on the Court of Appeal in accordance with Article 164(3) of the Constitution only on matters of law. The appellate jurisdiction of the Court is only concerned with hearing and determining appeals from decisions of the Registrar of Trade Unions and any other court or Commission as prescribed under any written law of the country.

- i. The Employment Labour and Relations Court has various roles, and one of them is to facilitate social dialogue. Social dialogue includes all types of negotiation, consultation, exchange of information and collective bargaining. The ELRC facilitates social dialogue

by defining and adjudicating the rights and obligations of the tripartite players- governments, employers and employees.

- ii. The other role of Employment Labour and Relations Court is to protect and promote social justice. Without the help of trade unions, most workers, are believed to have no equality of bargaining power. Employers are considered to be the providers of capital. To that effect, workers need court protection, which is one of the functions exercised by the ELRC. It is important to note that, Industrial Courts were not designed only for the people with senior positions in an organization but for the Blue Collar Employee, who toil in the agricultural plantations and industrial area manufacturing firms. Trade Unions thus ensure they go to ELRC to make sure that the workers have acquired the rights they deserve. The flexible industrial justice system exemplified in the Trade Disputes Act was not designed for those that hold high positions and end up misusing them.
- iii. One of the roles that the ELRC is traditionally known to offer as an Institution of Social Justice, is to provide quick and inexpensive justice to each and every worker. The procedures of trade litigation or rather dispute resolution, have always been created to help the workers, considered having low bargaining power as compared to their counterparts, who are the employers, to access quick, affordable, and effective remedies; The role of the ELRC has changed over the years. In 1964, it was an Industrial Court, and it was recognized under the Trade Disputes Act CAP 234 of the Laws of Kenya. In 2007, ELRC was made a Superior Court of Record by the Labour Institutions Act Number 12 of 2007. Finally, in 2010, ELRC became a Superior Court of Record under the Constitution of Kenya 2010 (after the new constitution was passed and came into force. This has mainly been observed because of the changing nature of labour markets.
- v. The role of the Industrial ELRC has expanded in taking care of new actors like the Non-Governmental Organizations. Initially, the practice of labour law was only restricted to



representing trade unions and employer associations. NGOs were players who are not traditionally associated with tripartite in the world of employment and labour.

## **II. Wage councils**

Wage councils are created under section 43 of the Labour Institutions Act 2007. The Act gives Cabinet Secretary in charge of Labour (formerly Minister of Labour), the power to establish wage councils whose functions include but not limited to the following; Investigating the remuneration and conditions of employment in any sector or sub-sector, as well as inviting and also considering written and oral representations, from interested parties and afterwards making recommendations to the Cabinet Secretary on minimum wage remuneration and conditions of employment.

The minimum wage was introduced through the wage council system before independence, (Kenya attained its independence in 1963) and at a time when collective bargaining was at its infancy (*Fashoyin, 2007*).

One of the Wage Councils goals is to put in place a bare (minimum) wage. In addition, the Wage Councils have a separate council in agriculture and in several industrial sectors. These are particularly where collective bargaining is low or weak or does not exist at all. Despite all the above-named cases, a wage minimum is on every occasion set. Therefore, in other sectors like the private sector, there is the inferred understanding that collective bargaining negotiations that take place are aimed at building or improving on the minimum wage that has been set through the wage council system. This is regardless of whether collective bargaining takes place at levels like the sectoral level or enterprise level. Unlike the sector-specific industrial and agricultural wage councils, the general wage council applies to all unspecified sectors and by far has the widest coverage.

Wage councils are setup by the Labour Cabinet Secretary (initially known as the Minister of Labour, in the old Constitution) after consultation with the social partners. Initially, there were

about 17 wage councils before reform of the labour code, which is considered a recent reform. Most of the councils had formerly been inactive. (*Fashoyin, 2007*).

The non-use of the industrial wage councils arose relatively from the lack of interest among employers who, instead preferred to either apply the existing CBA or simply the industry minimum wage in their various workplaces. The Wage Councils build this traditional belief of the of the minimum wage, in which a minimum wage is set below which wages for a defined population of workers should or should not fall. The reasoning of the wage councils is that several wage earners are either unorganized, or they are not in a position to use the collective bargaining process to improve their employment interests. This can be because of the employer's unwillingness to develop a bargaining relationship with the workers, or because the workers/employees were not organized. (*Eyraud and Saget, 2005*).

If any of those cases is witnessed, public policy reaction has been the advancement of different discussions at the tripartite wage councils. When particular wage and conditions are agreed and passed, every employer in the formal sector is obliged to apply the agreed minimum wage: including hours of work, applicable public holidays and so on as published in the Wages Order. Normally, the wage council agreement is based on the report of an independent study of economic trends in the particular industry or sector. An example can be the case of the general wage council, of the national economy. In the case where a failure to agree on a wage council has been reported, the decision rests on the Cabinet Secretary of Labour. The Cabinet Secretary, afterwards holds informal consultations with other industry leaders or any given experts, on the basis of which he/ she chooses the applicable wage rates and gives out the wage order (*Eyraud and Saget, 2005*).

Furthermore, the wage councils mostly provide the statutory minimum wages which are the outcomes of social dialogues between government, employers and employees, and represent a political understanding which balances on one hand the national commitment to protect low

wage earners and on the other, the ability of companies or organizations to pay. This specifically in small and medium-size enterprises. Usually, discussions or any form of negotiations at industry or enterprise-level takes its instructions from the minimum wage, as determined by the Wage Councils. In this structure, the wage councils in Kenya are based on a key objective of the Declaration on Social Justice for a Fair Globalization, as provided by the International Labour Organization, which emphasizes the significance of the minimum wage in setting progress towards social justice in the period of globalization. The Declaration on Social Justice for a Fair Globalization requires the ILO member States to implement policies associated to wages and earnings, hours and other conditions of work, which is basically designed to ensure a just share of the fruits of progress to actors in the Industrial Relations System and the lowest permissible degree of living wage to all employed and in need of such protection (*ILO*, 2008).

In conclusion, it is important to remember that, the minimum wage in Kenya is a highly established system. In this role, however, the wage councils provide a crucial back up for workers who for one reason or another do not have the protection of trade unions. By providing protection for the low income earners, the wage councils serve as counter to a deflationary policy, and contribute largely to encouraging internal demand appropriate for generating economic recovery and employment nourishment. The challenge faced by the social partners, is the issue of checking and enforcing the minimum wage in sectors like the unorganized. This is a huge task for the enforcement authority, which is in the past considered having less manpower mechanisms to ensure that the legal minimum wages are obediently provide for by all concerned employers.

### **III. The National Labour Board**

The National Labour Board (NLB) replaced the Labour Advisory Board, and operates as a tripartite advisory body to the Minister of labour (now known as Cabinet Secretary in charge of

Labour) on general issues concerning various elements of the labour market, for instance employment, productivity, wages and issues relating to trade unions. It also deals with matters relating to the institutions and processes relating to the settlement of labour disputes. The National Labour Board is also mandated with advising the Cabinet Secretary in charge of Labour (Currently, Ukur Yattani) on Kenya's participation in international organizations, especially the International Labour Organization and other regional or even advancing to continental institutions that are mainly dedicated to labour, such as the African Union's Labour and Social Affairs Commission.

The National Labour Board has a tripartite membership. This membership is comprised of 3 representatives each from the employers and workers while the government on the other hand, is represented by 6 members. Also included to the board, are two independent members and a chairperson. These members need to have an experience in matters, labour relations. In many aspects, this membership structure takes its directions from institutions such as the International Labour Organizations.

The board functions generally include but not limited to the following;

- a) It is mandated with the inspection and monitoring of developments in the broad area of labour. Here, NLB identifies and discusses issues that can in one way or another affect the smooth functioning of the employment relationship and come up with appropriate measures which the government could use, either to change or promote specific subject matter. Measures in this broader category includes; to provide the cabinet secretary with advice on how to promote and sustain peaceful relations in the workplace, and also the way the government might look into a potentially damaging development in given workplaces or even sectors.

- b) National Labour Board is also involved with some aspect of social dialogue on international issues on where the state might wish to take a position, for instance some deliberations at the annual International Labour Conference.
- c) Even though the functions of the Board are highly restricted to the general area of labour, it is also authorized to carry out research on matters labour, economic and social policy. Nevertheless, there is a critical opening for innovation and creativity in contributing to national issues that may impact on the labour market, despite lack of evidence that points to dedicated research commissioned by the National Labour Board.

In other words, this phase places the National Labour Board in a best position within the wider connotation of dialogue on socio-economic issues that are important to the labour market, and could also provide a potentially fruitful point of interactions with institutions such as the National Economic and Social Council (NESC). This is dependent on the ability of the Board to develop a reasonable agenda and clearly and precisely defined strategic plan on how the labour market could efficiently react to the changing nature of the employment relationship in the country. It also depends on the availability of adequate manpower and material resources, as well as the preparedness of the government to make maximum use of the experience and knowledge of the board to move ahead the effectiveness of the labour market.

### **3.2. Labour Actors**

The following are the actors commonly engaged in the process of collective bargaining and social dialogue in Kenya.

#### **I. The State through the Government**

The government is considered to be the main actor of IRS in Kenya. The government is in charge of regulating activities that other actors are engaged in either directly or indirectly through the

government agencies as Dunlop puts it. The government actively intervenes in management-union relationships by enacting labour laws and emphasizing the corporate social responsibility.

The state is helping the corporations to check their capricious managerial actions by intervening on some of the decisions passed by the corporations. The state also helps the company in solving problems about labour force before they get out of hand. Labour laws enacted by the state also provide a formalized mean to the labour as well as employers to release their emotional dissatisfaction concerning wages and incentives as well as working conditions. Without prejudice or any form of discrimination, every organization should follow labour laws, as this will ensure the smooth running of the IRS. When workers are well educated by their trade unions or higher institutes of learning, it becomes easy for the organizations they work for to convince them about the corporate goals and motivate the workers towards these goals. Better industrial relations or rather industrial relations system helps you to run your company in an efficient manner. You can maintain morale among your employees with the right kind of industrial relations. Industrial relations are considered to be more of an art than a science, which is balancing a number of factors to get the right relationship between capital and labor.

Kenya provides instruments like the Trade Unions Act, the Industrial Relations Charter among others for the formation, structure and organization of trade unions. These Acts are given by the government to make sure that the trade unions follow a required order. The Taskforce on the review of labour law has in the recent times submitted a draft Labour Relations Act, which repeals the two initial acts when it is adopted. The formation of staff associations, employees associations and employees' organizations for the registration and control of trade unions is provided for by the Trade Unions Act.

According to section 2 (1) (a) of The Trade Unions Act, a trade union is defined to involve an association or anything related to that, be it permanent or temporary of basically more than six persons, whose main objectives are to regulate the relations that exist between workers and

employers. In this arrangement it is assumed that all employees in sectors, (the public and private) have the freedom to join and form associations of their liking. However, in the Industrial Relations Charter, the parties agreed that the following will be excluded from union representation; People who are formulating, administering, coordinating, or rather controlling any aspects of the organization's policy; other category of staff who may in the case of any particular undertaking. The parties also agreed, in a meeting which was chaired by the then Minister for Labour (currently, they are referred to as the Cabinet Secretaries as stated in the 2010 Constitution of Kenya) and in attendance, there were representatives of the FKE (Employers' Association) and COTU (K), (representing the workers).

The civil service was barred from unionization by Presidential Decree for many years. The ILO Committee of Experts on the Application of Standards over and over made requests to the Government of Kenya to look into the issue of the need to allow establishment of a trade union to give to the civil service representation on issues related but not limited to collective bargaining, terms and conditions of service among others. Likewise, the Committee in charge of Freedom of Association has tried advising the Government to take necessary steps to ensure the right of civil servants, not engaged into the administration of the state, to create or take part in organizations of their own liking. Only recently, as a result of all that, did Civil Service Union get registered. Membership of trade unions is open to every person, including minors above the age of 16. They enjoy all rights of membership but are barred from holding executive posts of the trade unions until the age of 23.

Kenyan trade unions are sector-based. Nonetheless, some trade unions are operating beyond individual industries. A good example being the Kenya Union of Commercial, Food and Allied Workers (KUCFAW) which represents workers in varied sectors like, food and financial sectors among others. Presently, there exist more than 37 registered trade unions, with more than 35 being affiliated to the Central Organization of Trade Unions (K). According to COTU-K more

than 244,000 individual members belong to its affiliated unions today. The number keeps on growing.

The Government of Kenya plays a vital role to ensure there is a peaceful existence of industrial relations system in the country. The following are but not limited to these roles.

**Upholding the Law:** The Government influences the relationship between the employers and employees and the industrial relations processes as well. Where the Government is not involved directly, then it uses its agencies through the construction, passing and implementation of relevant industrial relations law and regulations among others. The legal framework is determined by the government and/or its agencies, within which Industrial Relations must function. This is possibly in consultation with other role-players in the industrial relations processes. These include things such as trade union representatives, selected employees and the employers. The legal framework can be the legal restrictions enforced on an employer/ employee relationship. In cases such as the amount of hours an employee is allowed to legally work per week and how much an employer is compelled to pay an employee for a certain amount of work.

**Judge and jury:** The government can also become involved directly or indirectly in the industrial relations processes when the set limits are over-used or negotiations do not go as they had been planned. The government could become involved in, for instance, solving an industrial relations dispute in court, or adopting or amending a policy which may have some flaws that are out of date or newly irrelevant following the prospect of a certain case or set of negotiations.

Basically, the government benefits from Industrial Relations provided that a safe working environment promotes employee and employer satisfaction. This in turn helps maintain increased employment rates which is mirrored well on the government and directly addresses and influences issues such as poverty and crime.



## **II. Employers**

There has been an lasting unity and stability between different actors in the employment relationship in Kenya. As *Fashoyin* (2007) observes, this stability is largely associated with a social contract that was created soon after independence and is the outcome of a labour policy that supported at that early stage fewer but strong trade unions. Most of these trade unions have the capacity to relate with employers on equal terms. This however changed with the amending of 2007 labour laws as employers started feeling that some of the amended laws were against them as we will see in the next part on the debate. On the employers' side, there has also been an internal resolve, for most of the period, to support one body as the sole employers' voice on labour and socioeconomic issues. The premier employers and workers organizations in Kenya have broad appeal in their respective constituencies and have remained the national voice for their members. (Fashoyin, 2007)

### **a) Federation of Kenya Employers (FKE)**

The Federation of Kenya Employers (FKE) is the main organization/ association that represent the employers' interests in Kenya. There are other associations affiliated to it. FKE was registered under the Trade Unions Act and represents the interests of almost every employer in the country. It was formed in 1959 under the Trade Unions Act CAP 233. It is Kenya's leading employers' organization in advocacy, industrial relations and related value-add services through management, consultancy and training. Formation of FKE was an achievement as employers felt they had been left behind in terms of representation as it is mostly workers who were represented by different associations.

The Federation of Kenya Employers' membership includes employers in both private and public sectors as well as state cooperation's, the local authorities and employers associations examples being;

- a. The Kenya Power and Lighting Company;

- b. Mabati Rolling Mills (roofing company);
- c. East African Portland Cement Company Limited;
- d. Oxford University Press (books publishing Company);
- e. Kenya Airways;
- f. Kenya Revenue Authority;
- g. Kenya Bankers Association;
- h. The Nairobi Hospital among others.

The Federation of Kenya Employers provides a platform for employers in creation and promotion of sound industrial relations and scrutiny of fair labour practices. The Federation also advocates, supports, and defends the interests of employers. In addition, the Federation supports good management practices and develops sustainable institutional capacity and competence among its members.

Clearly, the FKE has gone through rough times, and appears to have returned to its previous position as the main voice of employers on issues of the labour market, and specifically in the economic and social development globe. Today, among others, the FKE boasts of high professionals from different areas, who provide quality technical advice and services to members, as well as effective participation in various institutions of social dialogue in the country. In the past years, FKE become the main voice of business on labour and social affairs, and also the sole body that negotiates collective agreements for all the sectoral associations and some 200 individual employers with the workers' organization.

The function of the Federation of Kenya Employers in collective bargaining negotiations arose basically because of the technical knowledge that the FKE officials had acquired over the past years on the legal and institutional framework for employment relations. Related to this is the promising image of the federation and the confidence of the members by which they freely delegate the federation as a front row negotiator in collective bargaining, at different levels of

both enterprise and sectoral. Captivatingly, this agreement has for the better part enjoyed the trust of labour, which also show appreciation of the FKE as fair and neutral in upholding the legal and institutional framework for collective bargaining. In this regard, the FKE is always free in letting all of its members know when their conduct or practice might be at any form of disagreement with the legal framework or with what is considered to be good industrial relations practice.

Apart from an active engagement in the collective bargaining process, the FKE is also active in tripartite meeting with experts and engage with the government and all the labour matters, that are directly related to the labour market and others that deal with wider economic and social policy. In any of those given situations, the participation of the federation is at the high level. One such high level involvement is on the board of the re-established National Social Security Fund (NSSF) where the executive director of the federation is the employers' representative. Such direction provides an noticeable opportunity to take part in shaping public policy and they also improve the extensive outlook for public policy that answers to employers' wider interests.

### **III. Employees**

In Kenya, workers or the employees are always represented with various unions depending on their different interests. Narrowing down how each and every trade union works independently can be a challenge as there are more than 40 trade unions in the country at the moment and others keep on sprouting. Instead, we are going to use the umbrella trade union, which is COTU and how it represents the workers.

#### **a) The Central Organization of Trade Unions of Kenya, (COTU-K)**

The Central Organization of Trade Unions (COTU) is a national trade union in Kenya. It is the main union as other unions fall under it or simply affiliated to it. COTU was founded in 1965

upon the ending of the Kenya Federation of Labour and the African Workers' Congress, which were the main trade unions back then. Trade unions in Kenya, in contrast to most labour movements in Africa, are united in one strong labour centre, the Central Organization of Trade Unions, (COTU). The affiliate members of COTU-K come from different sectors which include;

- a. Kenya National Union of Teachers which was for a long time standing on its own but joined COTU in 2019;
- b. Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers;
- c. Kenya National Union of Nurses;
- d. Amalgamated Union of Kenya Metal Workers;
- e. Banking Insurance & Finance Union (K);
- f. Kenya County Government Workers Union;
- g. Kenya Shipping, Clearing & Warehouses Workers Union;
- h. Kenya Union of Post Primary Education Teachers (KUPPET);
- i. Kenya Medical Practitioners & Dentists Union;
- j. Kenya Airline Pilots Association;
- k. Kenya Union of Commercial, Food & Allied Workers;
- l. Kenya Union of Journalists;
- m. Kenya Long Distance Truck Drivers and Allied Workers Union and others.

From its 34 affiliated unions, COTU recorded a membership of about one million in 2009. This claim may have been exaggerated since the records of the Registrar of Trade Unions are not up to date while others are not kept in order. It is not known whether the records are updated from time to time. There has also been a laxity on the part of the government institution to cross check or do a vetting of the accuracy of the submissions made to it by the trade unions. Some of the big unions in the public sector are not affiliates of COTU.

COTU draws most of its membership in the private sectors. In the recent years, there has been a reported membership decline in some of the affiliated unions in the private sectors. For instance, a few years ago, the Postal and Communications Union, had a membership of 27,000, but as at 2009, it was only left with about 3,000 members. This is due to retrenchments and corresponding increase in atypical form of employment. Notably, in universities and agriculture sectors, there has been some increase in union membership. These increases however, are not large enough to fill in for employment loss or the growth of atypical employment, like the fast growing mobile phone service, where unionization is close to impossible.

Also, the planned unionization of the huge *Jua Kali* operators(a Swahili term to mean the workers who toil under the sun on a daily basis to make ends meet. Example are the artisans and the welders) in the informal economy is yet to be achieved. In view of the foregoing, it may be hard to know the exact membership of COTU. In view of that, an estimate of the membership strength of the labour centre is probably about 500,000 members, which represents a massive increase of 66.7 per cent, ending the year 2010 which is considered a 5 year. The adding of membership in the non-affiliated unions to COTU, represents a union density of about 30 percent, that is; the size of unionized wage and salary earners in the country (*Heyler & Strevska*, 2010).

There is a comparative research suggestion, which includes that, union density is higher in Kenya than in many other African countries. As Hayter and Stoevska (2010) show, union density in Kenya is much higher than the density in countries like in Egypt at 26.1 percent, Malawi at 20.6 per cent and in Tanzania at 18.7 per cent. Nevertheless, union density in Ghana and South Africa, is considered higher than in Kenya, at 70 per cent in Ghana and 40 per cent South Africa. Kenyan unions have begun to recruit new members, despite the difficulty in membership recruitment. Observation is made particularly in the growing atypical type employment. A good

example is the unions in sugar bakery industries as well as the electrical are recruiting casual workers into their membership.

### **3.3. Tripartism/ Social Dialogue in Kenya**

Tripartism can be referred to as the process in which the foundation for a sound industrial relations system can be laid at the country/ national level. Ideally, tripartism is the process whereby the government, the most employees' representative and organizations of employers mostly as equal and independent partners, where they consult with each other on labour market and related issues which are within their spheres of competence. They therefore jointly formulate and implement national policies on such labour-related issues.

Nevertheless, this ideal situation is seldom reflected in practice, mostly in developing countries or in societies with fairly authoritarian governments. These countries believe that, the direction of economic and social development is one of their huge responsibilities. A more realistic model where these countries (developing countries) are concerned, is one in which a government of a given country, consults or rather work hand in hand with the majority of representatives of employers' and workers' organizations on labour market and related issues which are within their fields of different capacities and takes account of their views in national strategy its implementation and formulation.

There are various examples of tripartite mechanisms at the national level, as well as informal applications of tripartism. In many different countries there are bodies mandated with minimum wage fixing which reflect the participation of all three parties (the government, employers' representation and employees' organizations), often leading to a consensus on minimum wages, and sometimes on other minimum terms of employment.

The justification of tripartism is to be found in many principles amongst them being the principle of democracy, the essence of which is a sharing or diffusion of power flowing from the

encouragement or recognition of various pressure groups in a society as an effective safeguard against the centralization of power. (Clegg 1960)

Tripartism as a process is a part of a pluralistic outlook on society through which stability is maintained, freedom of association being the main principle because without the right of association the interest groups in a society cannot function effectively. Acceptance of the principle of sharing power entails recognition of the fact that capital and labour represent two important pressure groups in society, if for no other reason than that both of them taken together are the principal providers of goods and services and wealth-creators in a market economy. (Clegg 1960)

In Kenya, workers' right to industrial action like strikes, lockouts, demonstrations among others to protect their interests is provided for in the constitution, (Article 37 of the Constitution of Kenya, 2010) laws and regulations. Every person in Kenya has the right to for peaceful assembly, without any form of arms. Article 37 also talks about freedom of picketing and demonstrations, as well as presenting of petitions to public authorities.

In addition, most of the communication activities involving the organization and development of labour-related matters, in most cases follow the tripartite way, that concerns the state, employers and employees. In this system, (tripartite system) the state is represented by the Ministry of Labour to achieve the labour-related Acts of parliament and regulations. While the national umbrella organization for employers is the Federation of Kenya Employers (FKE) and finally the summit body for workers' unions is the Central Organization of Trade Unions, Kenya (COTU-K), which is mostly referred to as the mother union as majority of the unions in Kenya are affiliated to COTU-K. Industrial-related disputes are from time to time resolved through conciliation, negotiations, arbitration and the Industrial Court. The role of National Economic and Social Council (NESC) in the social dialogue is periphery; it concerns itself with recommendations for strategies, policies and practices to create employment, enhance workers' productivity, achieve equity, and improve working conditions and employee welfare.

By impression of its mandate, NESC does not participate directly in Kenya's social dialogue. Nonetheless, its policy advice and recommendations seek to provide an objective and favorable environment for appointments between employees, government and employers and new entrants in the social dialogue space such as NGOs and think tanks. The impact of the indirect input of NESC will show as Kenya attains an upper middle income status where all its citizens will enjoy a high quality of life by 2030 which is mostly known as "Vision 2030".

Since the establishment of NESC in 2004 as a top advisory body to the government of Kenya on policies to fast track the socio-economic transformation of the country, the NESC has contributed indirectly to social dialogue in Kenya by focusing mainly on fundamentals such as over-arching strategy and policy. Kenya's long-term development plan, Vision 2030, which was developed by NESC between 2006 and 2008 lays the foundation for social dialogue. Among the Vision's key goals are "building a just and cohesive society that enjoys equitable social development in a clean and secure environment"; "creating a globally competitive and adaptive human resource base"; and "raising labour productivity to international levels". As part of its advisory role to deepen the drivers of transformation in Vision 2030, NESC recently worked with the Ministry of Labour to develop two key policy papers, namely "Employment Strategy and Policy for Kenya 2012" and "National Productivity 2012".

In wider sense, the concept of the tripartite system, includes the relationship between employer and employee in the course of the smooth running of any given organization. The system may advance itself into spheres which cover some aspects of the quality marketing and disposition of profit, among others. This association in some way affects, at all costs, either the economic, social or the political life of the whole community. Needless to say, industrial relationship creates a series of social life which have an effect not only on the relations between employers and employees but also on the community at large.



With that said, we can say that industrial relations can be described as an aspect of industrial life. The industrial relations chapter gave out all the agreed responsibilities of management and union and their respective obligation in the field of industrial relations. Since then, the Charter has been revised twice but remained the basis for tripartite system and labour relations in Kenya throughout the years. With the set up of an industrial court in 1964, one additional basic milestone was laid for development of amicable conflict resolution in Kenya. (*Aluchio, L.2005*)

For quite a while now, there has been an ongoing debate on the issue of the existing laws in Kenya, more so the laws that in one or the other affects the industrial relations system in the country. The Constitution of Kenya 2010, the Labour Laws 2007, bills debated or passed affecting the IRS are some of the discussions that have sparked different arguments with the concerned parties. There are various laws that have been passed that have affected the labour stakeholders in Kenya and these stakeholders have raised their concerns on them. Some of the laws discussed or passed or both discussed and passed have been supported by other labour actors while others have been rejected.

After many years of uncertainty actualization of labour rights for several groups of employees (workers), the state and other social partners undertook an all-inclusive reformation of the labour code that led to the execution of five major labour laws in 2007 (*Fashoyin, 2007*). Thus, the new legal framework can be explained to mean a favorable response to emerging labour market realities. In particular, these realities controlled over the urgent need for greater social safety nets for the growing number of workers with either total lack of social protection or inadequate social protection. Getting a suitable balance between a socially responsive legal framework and the inevitable flexibility in the highly competitive global environment is seen as one of the major challenges facing the tripartite partners.

The other thing is the thrust of some of the provisions of the legal framework, which remains a source of anxiety among the labour market actors (*Fashoyin, 2007*).

The main focus of this debate will be the employers and the employees as they are the ones that are directly influenced by these laws. The government on the other hand, is present to regulate the existence of trade unions and employers' association. We already looked at how the government regulates the existence of trade unions in the country and thus, the discussion hereunder will concern the employers and the employees.

### **3.4. The Employers' Opinions through the Federation of Kenya Employers (FKE)**

The Federation of Kenya Employers (FKE) is a body that represents the employers' interests in Kenya.

It is important to note that employers have criticized several provisions of the new labour regime (the 2007 Labour Laws), which they view as limits to flexibility in the labour market, and with potential adverse results on the sustainability employment.

After the amendments of the 2007 labour laws, employers warned that amendments to the Employment Act are not in support with the Kenyan citizens and likely to worsen the country's unemployment issues. According to them, the different revisions, which were signed into law by the then President Mwai Kibaki in the last week of March 2016, would increase the costs of doing business and may not easily attract foreigners investors) to the country to do business. Some of the clauses in discussion included Section 29. Section 29 was basically amended to omit among other, weekends in the calculation of paid maternity leave days for working women. Employers are currently expected to provide 30 working days, which adds at least 24 more days of paid maternity leave to the 90 days. Initially, it was 30 calendar days, but the Employment Act, 2007 came up with changes on the same.

The other section that was amended was section 30. Section 30 currently requires employers to give employees a maximum of 30 days of sick leave with full pay. After this leave, the employer is also entitled to 15 days on half salary in one calendar year. Jackline Mugo, the CEO of the

Federation of Kenyan Employers (FKE), said that in the year 2007, after the introduction of the new Labour Laws, there was a shoot up of 30 per cent in the labour cost component of doing business. She was therefore approximating an increase of 15 per cent according to the calculations of FKE. According to Ms. Mugo, these laws would further jeopardize the chances of women getting jobs.

The Federation of Kenyan Employers (Employers' Association) et.al.(2008) provides that the 2007 labour laws (which are the new laws) are from time to time frustrating Kenyan employers as they continue struggling with the negative results of implementing the regulations. While the new laws may be seen by many as a benefit to employees, they may result to a commotion in the local job market. According to the association, the intention of the labour laws may be dignified, but the enacted new labour laws of 2007 are less likely to create and improve the relationship between the employers and employees. Federation of Kenya Employers further explains that these laws are only meant to favour employees and for that reason, the employers feel they have been left out. According to FKE, these laws they might even cause direct or indirect attacks or opposition between the two parties. The critical look of the National Labour Laws has been a concern to both the Kenyan public and the Government for a while now. However, the manner in which these laws were reviewed remains questionable. (FKE et al, 2008)

Employers also say that the issue of paternity leave is an expensive affair. They believe that the cost of doing business in Kenya has immensely risen since the introduction of paternity leave. FKE Executive Director Ms Jacqueline Mugo said in a meeting in Nakuru Town during the 28th Annual General Meeting of FKE's Rift Valley branch that, the laws set aside to govern paternity leave has led to an increase in the cost of doing business by 15 per cent. Nonetheless, she also said that FKE was not completely objecting to the progress of these benefits but their concerns were the effect on the total cost of employment in the country. As per the Federation of Kenya

Employers, the increased period of maternity leave from two to three months is a big concern to employers.

Ms. Mugo also said that FKE was not consulted well by the parliament/ government when the laws were passed. She added that Kenya was already ahead of other countries when it comes to issue of maternity and paternity leave. She felt that for the laws to work without any biasness, then the Government needs to make sure that all the available stakeholders are consulted before any decision is passed by the state through the government agencies.

According to *Aluchio*, (2005) present businesses are suffering a heavy burden of taxation amongst different struggles, hence, the introduction and entrenchment of necessities like the medical surveillance, Health, and Safety Audits among others into the laws is much increasing the value of doing business within the country. Sadly, these changes were enforced without stakeholders' participation (FKE being one of them). One of the limitations he points out is that it was quite clear, right from the beginning that the Department of Occupational Health and Safety (OHS) at the Ministry had no capability to hold out these activities without loading the prices of the said activities onto companies.

What ought to be mostly checked at as *Aluchio*, (2005) says are the Work Injury Benefits Act (WIBA) and the Occupational Safety and Health Act which are mainly involved with ensuring that oppressive practices are gotten eliminate at workplaces. Though the laws look for to safeguard employees' rights and were truly enacted to take care of oppressive practices at the workplace, can negatively have an effect on the job market as they are going to build employment a tough issue to accumulate. WIBA is an Act of Parliament that seeks to provide for reward to employees for work connected injuries and diseases contracted within the course of their employment and for other alternatives connected purposes. It ought to be noted that the definition of a dependant in WIBA is simply too wide and it may result in pointless litigation.

The definition does not conjointly embody an employee's spouse. It would have been necessary if the definition restricted the dependants to the immediate family solely. Also included within the WIBA is that the provision for obligatory insurance of employees. This is very unfortunate as long as the premiums have enhanced to levels that threaten the survival and competitiveness of industries in Kenya. (*Aluchio, 2005*)

Aluchio, (2005) also expands that the supply on the right to compensation also deprives employers an equal protection of the law whenever a worker acts against set commands. This provision condones misconduct by authorizing compensation for injury where as the worker is involved in illegal activities or goes against the employer's commands. The WIBA has further enlarged the meaning of the employee to incorporate any worker on a contract of service with an employer by removing the limitation of the earnings level. Work Injury Benefits Act talks regarding compensation, whereby, compensation for permanent disablement shall be calculated on the idea of earnings for 96 months subject to the minimum and maximum amounts determined by the minister of Labor. (According to Part V Section 30 of WIBA)

Federation of Kenya Employers et.al. (2008) further explains that it is worth noting that the implementation of WIBA is already proving to be a challenge because of lack of a platform for advising on the different levels of compensation and any other matters related to it. On the other hand, the Occupational Safety and Health Act (OSHA), which is amongst the 5 Labour Laws implemented in 2007, provides for the safety, health and welfare of workers and every other person who is lawfully present at workplaces. OSHA also provides for the establishment of the National Council for Occupational Safety and Health and for other related purposes.

OSHA introduced compulsory annual safety and health audits, risk assessment and management and the requirement for a health and safety statement by all employers. This is indeed a real burden for employers because they will have to pay more in terms of treating the workers. The provision of the eight-year compensation indicates major problems for employers, as some of the

employees take home a five digit salary on a monthly basis. An example being, an employee earning, say, 100, 000 in Kenyan Shillings which is like 1000 US Dollars a month would expect compensation of 8.16 million (Kenyan Shillings) while one earning let's say Ksh 1.5 million a month would expect Ksh 100 million in case of permanent disablement. These are outrageous amounts that could result in the closure of many businesses. (*FKE et al.* 2008)

It continues explaining that, whereas the enactment of Labour laws is not bad, because they help in enhancing employer/employee relations in any given country, the recently enacted regulations in Kenyan were ill-advised because they will cause a lot of bitterness between the two parties: the employers and the employees. The government should have held more consultations with the stakeholders before enacting the laws in order to reach a consensus.

Currently, Kenya is considered to have the highest minimum wage among comparator countries, an aspect that might seem positive when evaluated at lower level, but comes with core policy weaknesses.

The former board chair at the National Social Security Fund, Mr. Kariithi thought that it may be hard for a foreign investor to invest in Kenya, given the impact the Labour Laws and amendments may rest on them. He thinks that the local firms have their own in-house arrangements already existing and the new laws may not make such huge changes in different workplaces. Mr. Kariithi insisted that investors lose 70 percent of all the value that exists on investment taking into consideration the point that, the labour productivity of Kenya is at 30 percent. Mr Murimi thinks that, instead of targeting remuneration in making labour policy reviews, the focus should have been turned on production of labour.

The above view points of the employers and their representation, clearly shows that the employers are against most of the new laws implemented. They feel these laws are mainly one sided; that is fitted to benefit the workers to the expense of their employers.

Industrial Relations System protects both the rights of employees and of managers too. As and when workers create the problem of indiscipline, IR provides employers with a system to handle with employee indiscipline in the organization. The following are some of the ways the employers benefit through the industrial relations system or rather as a result of unionized employees.

**Union Representative:** Trade and/or labour unions represent the employees in negotiations with their employers. Since a trade union represents the majority of the voices of the employees, it allows the employer to clearly hear just one clear argument on behalf of the workers instead of getting them one by one from individual workers which can be tiresome and time consuming. While the interest of the union representative lies with the worker; his/her existence ultimately serves to benefit both parties who are the employee and employer. Union representatives then ensure that the process of Industrial Relations benefits the employee, and protects the interests of the employee during negotiations and similar relations with the employer.

**Collective Bargaining:** A trade union represents many different voices of the employees and gives the employers the opportunity to hear a clear and concise message like the demands or concerns of the common majority. This is one of the best interests of the employer as it streamlines conflict resolution. Trade unions have the power to call employees off strikes or sit-ins as soon as an agreement has been arrived at. The move solves issues relating to individual employees who hold out on returning to work or fulfilling their role in the production cycle even though a respectable agreement between employer and employees has been reached.

**Employee Welfare Watchdogs:** Trade unions look for the best interests of their members and the said members directly have an agent who will come in for them during all negotiations with employers about work schedules, income, safety. The existence of trade unions is also in order to protect employees' basic rights. These rights are such as that of accessing healthcare and being protected from accident and injury in the workplace (through implementation of Work, Injury

and Benefit Act as provided together with the Occupation, Safety and Health Act. Trade Unions thus help employers assess and meet their legal obligations to their employees. Employers know that, should any legislation change or new regulations be instituted, they will be informed through the proper communication channels and they can work with the trade unions to convey to the employees any changes necessary.

### **3.5. Employees' Opinions through trade unions**

The employees through the representation of trade unions have had different views concerning the amending and passing of the 2007 Labour Laws. Most of their views have been mainly on implementation as they are complaining that the laws have either taken long to be implemented by the government or the employers are breaking these laws.

Whilst the government always emphasizes on public Private Partnerships at all levels, the employers and employees have complained about the composition of the National Council for Occupational Safety and Health who are mainly government officials. There is need to either involve private sector representation or make the public sector representatives, ex-officio to prevent them from coming up with decisions which might be termed as unfair. Another area of concern on the aspect of this law is that the period under which employees could be considered to have acquired occupational disease is broadened to capture diseases that could incubate for a longer period after the exposure.(FKE et al, 2008). This affects employees' performance at work as well as imposes a huge burden on the employers who are supposed to take care of their hospital bills and other expenses.

Around 2010, after the passing of the 2007 labour laws in Kenya, The Central Organisation of Trade unions (COTU) felt that the government was taking long to implement these laws and at that time wanted the UN to compel Kenya to implement these laws fast. COTU felt that the laws passed would benefit the employees and they could not understand why the laws passed in 2007 had not been implemented by 2010. One of the things that COTU was complaining about was



the refusal by employers to allow employees to join a union of their choice. During an interview with the Standard Newspaper, a local newspaper, the Secretary General of COTU, one Mr. Francis Atwoli said, COTU would take that matter to the ILO summit that was scheduled to take place in June that year. (That was in 2010)

Mr. Atwoli Further added that, the move by employers according to Mr. Atwoli was against the conventions of ILO which are seen to be already ratified by Kenya. Some of these conventions are as follows;

The ILO Constitution (1919) which is about the Freedom of Association, The ILO Declaration on Fundamental Principles and rights at Work (1998) as well as the Universal Declaration of Human Rights (1948), and others.

One of the rights to organize and form employers' associations, and workers' organizations is the prerequisite for effective collective bargaining and social dialogue. In order for a worker to proficiently benefit from this requirement, the employee has got to be a member of a registered union as predetermined in the Labour Relations Act 2007. On the other hand, the majority of employers continue to deny their workers the opportunity to exercise their right to engage in meaningful bargaining. The Secretary General pointed out that the most notorious firms are the ones in the Nyanza Sugar belt.

The SG said that the workers in the manufacturing sector have been denied the right to organize and bargain under unions. COTU through Francis Atwoli was worried that the employers' actions were contrary to the law and by that time, no legal action has been taken after the Act came in practice. During the same year, in 2010, through Gregory Ombito and Company Advocates, the Kenya Union Plantation and Allied workers, filed a case against Kibos Sugar and Allied Industries in the Industrial Court. This was because of an employee who was sacked for refusing to dissociate himself with trade union and union activities. Atwoli was of the view that,

there is a laxity on the Ministry of Labour's side to supervise the new laws hence the employers have taken advantage of that situation.

There is a debate that sparked from the Secretary General of COTU-K on the need to include union representatives in the National Social Security Fund (NSSF) board of trustees. The Central Organization of Trade Unions (COTU-K) warned the Ministry of Labour against excluding social partners as per international labour laws after a gazette notice of early June, 2018 failed to include COTU-K representative Damaris Muhika to the National Social Security Fund board of trustees.

COTU-K representatives believe that COTU is supposed to have two representatives at the NSSF Board. The two people appointed to be COTU's Representatives were Francis Atwoli and Damaris Muhika and added that it had made countless efforts to Labour Cabinet Secretary Ukur Yattani since March, 2018 to include Muhika as her term was still extendable. First assistant Secretary General of COTU, Ernest Nadome, said that the Government is faced by major cases of corruption and with this; they want to do away with representation of workers at NSSF.

In the recent years, various union leaders in Kenya have come out to take part in politics with an aim of representing workers rights in the government. They are of the opinion that workers need representation in all the sectors in the country. They perceive this to be a move that will help them participate in decision making in matters affecting the working conditions of Kenyan citizens and economy of the country at large.

During the 2017 general elections, some of union leaders came up to run for various position in a bid to represents workers in the Kenyan Government. The government was against this move as it said it was unconstitutional as union leaders are not supposed to take part in politics. On the other hand, union leaders was were championing for this step urging the government to amend the labour laws and include a clause that would allow the workers to elect or appoint some union leaders to represent them in law making processes. One of the union leaders who ran for

political seat was General Secretary of Kenya National Union of Nurses (KNUN), Seth Panyako. Unfortunately, he lost to his counterpart, one Mr. Cleophas Malala for the position of the senator (Kakamega County, Kenya). This move caused Seth Panyako to file a petition before the Justice Legal Affairs Committee alleging that Interim Electoral Board Commission (IEBC) gazette wrong results in the Kakamega County senatorial election. The Court dismissed the petition terming it as incapable in its form and substance.

On the other hand, Mr Sossion, the Secretary General of the Kenya National Union of Teachers (KNUT), was nominated to the House as a Member of Parliament by Mr. Raila Odinga's (leader of opposition party in Kenya) Orange Democratic Movement (ODM). Mr. Sossion wanted to turn down this position, but Central Organization of Trade Unions Secretary-General Francis Atwoli asked elected and nominated trade unionists not to turn down their places in Parliament. He later on took an oath and was sworn in as a nominated Member of Parliament.

History has been re-written once again after The Kenya National Union of Teachers (Knut), on Thursday 22<sup>nd</sup> January, 2019 announced that it has rejoined Francis Atwoli's Central Organization of Trade Unions (COTU-K). Speaking at a COTU-K meeting, Knut Secretary-General Wilson Sossion said the decision to involve more than 312,000 teachers to COTU-K was agreed on during their 61st Annual Delegates Conference held the previous year (2018). KNUT made a challenging decision to leave Trade Union Congress, Kenya (TUC-K) which Mr. Sossion advocated for in the year 2014. Mr. Sossion believes that the move is meant to bring together all workers in the country as he asked employers and government not to fear the strengthened labour union. Quoting the words of Mr. Sossion insisted on fighting for the rights of workers in Kenya. Knut was a founder member of COTU-K from around 1965 but left in the following year(1966). COTU-K Secretary General Francis Atwoli supported. According to Atwoli, the move will help fight for even better conditions for teachers' rights just like it has been with other categories of workers.

The Industrial Relations System benefits workers by protecting them against unethical practices on the part of management. IR helps to ensure the employers do not exploit workers by putting them under inhuman working conditions and wages. Industrial Relations also provides a procedure to resolve workers' grievances at their workplaces or relating to work.

**Union Representatives:** Trade and/or labour unions are against the exploitation of employees by employers through engaging in activities like equal bargaining power, and represent workers' interests in the employment relationship. It is the union (representative) on behalf of the worker, who ensures that better wages that is sustainable for the future of the employee has been considered as well as improved working conditions so that the employees can be productive. The trade unions also make sure that there is mutual respect by ongoing conversation between the employer and their employees to keep the work relationship healthy. Union representatives also ensure that the process of Industrial Relations benefits the employee, and protects the interests of the employee during negotiations and similar relations with the employer.

**Collective Bargaining:** Trade unions represent the interests of a body of employees by means of a united front. With this, they can achieve the realization of the dreams of better salary, favorable working conditions and so on. This allows the employees' voices to be heard more effectively than if employees voiced the same concerns one by one in their individual capacity. Unions have the power to organize strikes, sit-ins and formal protests in order to get the employers' attention and to make them to consider matters from the perspective of the employees that the trade unions represent.

**Employee Welfare:** The work of trade unions is to look out for the best interests of their members (workers). Unionized worker gain different opportunities. For example, they earn higher wages than their non-unionized counterparts. The unionized workers have the trade unions representatives who act as their intermediary. The trade unions step in for them during negotiations with employers about work schedules, income, safety and others. Unions also

protect employees' basic rights such as the right to access healthcare and be protected from accident and injury in the workplace.

#### **4. CHAPTER FOUR: CONCLUSION**

Harmonious industrial relations between the employers and employees in different organizations are necessary for improving the productivity and thus the economic growth of the country.

Being a member state of the International Labour Organization (ILO), Kenya implements bare minimum in terms of wages to its workers (citizens). The employers through the Federation of Kenya Employers should bear this in mind and try to appreciate the minimum wage provided by the Labour Laws through the Wage Councils. The other thing is that, before the government makes any form of adjustment in terms of wage increment, it considers the state of the country's economy.

The employers might not be satisfied with the laws set aside by the state to run the industrial relations system. For them, as long as these laws exist, they feel they do not freely carry out their ventures. According to them, the country can boost its economy only if it lessens the limitations it has imposed on the employers, on matter taxes among others.

If the Government decides to do away with the current laws to the employers' advantage, then the workers will suffer as they will not have any law to protect them. With this, the employers can hire and fire the employees the way they want and pay them below the minimum wage.

The Government may take long to implement the adopted laws due to lack of instruments or resources that help them realize this goal. The other issue could be because of laxity on those employed in government offices to make sure that these laws come to force.

Knowledge is power, and everyone is in one way or the other, entitled to have the knowledge on how the industrial relations system works as well as the content of Labour Laws. The above adequately equips one to identify and address breakdowns in communication and the subsequent halt in production or lapse in productivity in any given organization or in any given country. It does not matter who you are, whether an employee, an employer or a casual observer, it is important that you know who to contact in the event of a breakdown in communication or unfair treatment in the workplace. Some examples of unfair treatment in the workplace, include; unfair

termination, redundancy without prior notice or without being given the reason to redundancy, salary below the minimum wage as provided by the Wage Council, lack of fair hearing as (stipulated by Article 50 of the Constitution of Kenya, 2010) upon termination of work among others.

It is vital to note that, clear lines of communication are very important to ongoing economic and industrial growth. The employers need to cultivate the culture of communicating with their employees. This will help the employees gain freedom and confidence to air out their suggestions or to freely talk about their challenges if any. If the employers are practicing paternalism, then they may never know whether the workers have problems or not and with this, the organization may slowly sink due to poor performance on the side of employees.

The government on the other side, should be open to consultation with the other actors of IRS, which are the employers and employees and with this, there will not be a problem of employers' associations complaining of not being involved in any labour related decision passed by the government.

Kenya, as a country, needs to develop a well coordinated labour management system and national labour policies that will help in labour regulations. The labour management system – often coordinated by a given Ministry of Labour (headed by Cabinet Secretary in charge of Labour: a case in Kenya) which deals with the implementation of policies, programmes and services related to many different areas. This body should be in charge of collecting all the information related to IRS and come up with sound judgment on the same.

Politics seem to be killing most trade unions as their leaders receive bribes from political leaders to serve their personal interests and fail to represent the workers' rights. In the recent past, the union leaders have participated in political campaigns with an aim of securing seats in government in order to represent the workers in government. These union leaders should stick to their agenda of representing the workers and not work with the government against the workers.

Employment Labour and Relations Courts (formerly the Industrial Courts), should work hard to reduce backlog of labour cases. Some cases drag for too long and the parties to the cases give up. These courts should make sure that the parties to a dispute have exhausted all other channels of alternative dispute resolution before the matters escalate to court level. This will help to reduce backlog of cases as it is known, “Justice delayed is justice denied.”

Social dialogue should be encouraged or rather be improved in order to achieve industrial peace and harmony. The IRS actors should work hand in hand in matters labour and the growth of the country’s economy. These actors should introduce frequent meetings where they will be discussing on the achievements they have met or come up with solutions of any problem they might be facing.

Good and sound Industrial Relations System is the back bone of the country’s economic, political and social growth. Kenya should take all possible measures to encourage its existence in the country and support it through creating, passing and implementing laws that ensure its stability.



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